THE RIGHTS AND AUTHORITY OF THE COMMONS OF THE City of LONDON,

In their COMMON-HALL assembled,

Particularly in the *Choice* and *Diſcharge*

OF THEIR

SHERIFFS,

Aſſerted and Cleared.

In Anſwer to the Vindication of the *Lord-Mayor, Court of Aldermen,* and *Common-Council.*

LONDON,
Printed in the Year MDCXCV.

Gray 1495.
Harvard College Library
27 Sept 1940
Yale University
by exchange

The Rights and Authority of the Commons *of the City of* London *in their* Common Hall *aſſembled, Particularly in the* Choice *and* Diſcharge *of their* Sheriffs, *aſſerted and cleared.*

In Anſwer to the Vindication of the Lord-Mayor, Court *of* Aldermen, *and* Common-Council.

IF the preſent Controverſy in the City of *London* be unhappy, and ill-tim'd; the blame of continuing, if not of raiſing it, muſt fall upon that Side, which ſhall appear to have been in the wrong.

But ſince ſuch a Conteſt is begun, in ſome Reſpects the preſent Time may be thought propitious, for bringing it to a fair Deciſion. For,

1. There is the leſs Danger in it, becauſe it happens chiefly among Men united in the ſame Cauſe and Common Intereſt; who have always ſtood up for the Rights of the City, and are likely to manage the Queſtion, who are principally entruſted with the Care of its Rights, without Animoſities; and quietly to ſubmit to Authority, or Conviction.

2. The Learning and Integrity of the *preſent Judges*, and the Independency of their Places, aſſure the right Side of Juſtice.

3. If it could be imagin'd, that they would be influenc'd by the Court: It is an happineſs that there is no colour to ſuſpect, that our preſent *Miniſtry* ſhould interpoſe to the Prejudice of either's Right.

And as no Prince, who is not truly popular himſelf, can be pleas'd to have Power lodg'd in any great Body of his People; the *Common Hall* could not, in any Reign but this, ſince Queen *Elizabeth*'s, have expected to bring on their Cauſe without great Diſadvantage.

And certain it is, there never was ſo great a Body of Men, of more ſteady Loyalty to their Prince, than this *Common Hall* is to his *preſent Majeſty* King *William*.

Yet I cannot but hope, that this Controverſy may be ended, without recourſe to *Weſtminſter-Hall*, or the laſt reſort to Parliament.

For to me it ſeems, there wants nothing to the quieting the Controverſy, but the ſetting it in a true Light: Which I ſhall endeavour to do with that faithfulneſs and impartiality, which becomes a conſtant Servant to *Truth*, and the *Old Engliſh Liberties*.

But I muſt premiſe, that tho the Author of the pretended modeſt Eſſay, runs the Diſpute as high as if the *Common-Council* and *Common-Hall*, were like *Rome* and *Carthage*; The ſole Point now in Queſtion is,

The Queſtion.

Whether the *Lord-Mayor*, and *Court of Aldermen*, by themſelves, or in conjunction with the *Common-Council*, as now compoſed or acting, have *rightful Power* to diſcharge any Perſon, whom the *Citizens* aſſembled in *Common-Hall* have choſen Sheriff; and to *exempt* him, or others, from the Service, for a Year, or Years to come?

Bating what relates to the higher Controverſy, he uſes but three Topicks to juſtify the *defeating*, or *vacating* the Election of the *Common-Hall*.

I. The Reſolution of the Judges, 40 & 41 *Eliz.*

II. By-Laws.

III. Cuſtom.

Every one of which I ſhall ſhew to be fully againſt him: and that both ſuch By-Laws and Cuſtom, unleſs of another Nature than is or can be pretended, would be abſolutely void.

Of the Reſolution of the Judges, 40 & 41 Eliz.

I. The Reſolution of the Judges is no more in Subſtance than this; That tho the Choice of Officers in Cities and Towns incorporated by Charters, be granted to *Mayor* and *Commonalty*, or the like; yet *antient and uſual Elections*, by a certain ſelect Number, are warrantable, by reaſon of *By-Laws*, made to avoid *popular Confuſions*; by virtue of a Power of making *By-Laws given by the Charters*. And that tho ſuch *By-Laws* cannot be found, they ſhall be preſum'd: and that this was *by common Aſſent, becauſe of ſuch eſpecial manner of antient and continual Election.* And according to this Reſolution, the Elections are ſaid to have been in the City of *London*.

But ſince the *Common-Council* do not pretend to chuſe the Sheriffs, otherwiſe than as part of the *Common-Hall*, which has long been in poſſeſſion of this Right; it is evident, that the Reſolution of the *Judges* is ſo far from proving the pretended Autho-

rity of the *Common-Council*, to ſet aſide Elections made by the greater Body of the City; that it manifeſts the illegality of the Attempt: ſince, according to this Reſolution, the *Common-Hall* is, to this Purpoſe at leaſt, not only the fulleſt, but the *trueſt Repreſentative* of the Body of Citizens; who, according to *Grotius* his Diſtinction, are the *Common Subject* of this Power, while their Repreſentatives aſſembled in *Common-Hall*, are the *Proper Subject* by which it is exerciſed.

Vid. Grot. de jure belli & pacis.

And if it were admitted, that an Authority to make this Power uſeleſs, or to weary them out of it, were by ſome *By-Law* given to the *Common-Council* as now compoſed; or that the Cuſtom has ſo long been on their Side, that ſuch a *By-Law* is now to be preſumed; yet it is very evident, that there is nothing to warrant it in that Reſolution. For beſides, that, as I have obſerved already, it only concerned Elections:

1. The Caſe is only of ſuch Proviſions as have been made, or are preſumable to have been made, *to avoid popular Confuſions:* which the *Common-Council* may, if they pleaſe, urge, for the ſetting aſide the Uſage for Elections in *Common-Hall:* But then they muſt conſider, that an Arbitrary Court would be ſure to fight them with their own Weapon, and, with parity of Reaſon, to ſet them aſide. And I ſubmit it to their calm Conſideration, whether the indefeazibleneſs of Elections, without the Conſent of thoſe who made them; or the defeating them at the Pleaſure of others, and from time to time requiring a new Choice, be the moſt likely to occaſion *popular Confuſions?*

2. The Caſe put is only of *Corporations by Charter*, and deriving their Power of making *By-Laws* from ſuch Charters; in moſt, if not all of which, that Power is by the Charters lodg'd in a ſelect Number there appointed. When, as I ſhall ſhew, the *Citizens* of *London* were a *Body Politick*, with Power of making Laws for the Welfare of the City; and had the choice of their *Portreve*, ſince called *Mayor*, and of the Sheriff of their City, by Preſcription, before they had any Charter: Which if they had, tho the Sheriffwick of *Middleſex* were annex'd to *London* by Charter; that would fall under the ſame Government, and be ſubject to an Authority independent on any Charter; eſpecially if ſuch Annexation has been *before time of memory*, and confirmed by Acts of Parliament.

And further yet, if it will appear, that no Charter to the City of *London* about making *By-Laws*, appoints any ſelect Number for the exercice of this Power; it will if poſſible be more evident, that the Reſolution of the Judges has nothing to ſupport the Authority claim'd by the preſent *Common-Council*.

However it muſt be remember'd, that the Reſolution ſays, *Such eſpecial manner of antient and continual Election*, could not begin *without common Aſſent*.

Since therefore *common Aſſent* has plac'd the Election of Sheriffs in the *Common-Hall*; it will lie upon the other Side to ſhew at leaſt the Preſumption of *common Aſſent*, to place the *Diſcharge* in the *Common-Council*. And they muſt not for this urge any Act of *Common-Council* as Authoritative in it ſelf.

Of By-Laws, particularly that 7 C. 1.

2. I do not find that the *Vindicator* pretends, that the *Cuſtom* for the *Mayor* and *Aldermen* by themſelves, or in conjunction with the *Common-Council*, to diſcharge a Perſon choſen Sheriff by the *Common-Hall*, is ſo antient, that a *By-Law* to warrant it, made by the *Common-Council* as now acting, much leſs by the *Common-Hall*, is to be preſumed. But he inſiſts upon Poſitive *By-Laws* made in the *Common-Council*, for their excuſing any Perſons duly choſen, by admitting them to Fine for one Year. This he ſuppoſes to have been eſtabliſhed by ſeveral Acts of *Common-Council*, one of which he pretends to have tranſcribed.

Vid. Vindic.

But certainly no Act ever began with [and] as his Tranſcript does: And it is viſible, that what he gives as the whole Act, 7 *C.* 1. is very lame and imperfect. Had he publiſh'd the beginning of it, the pretence of more Acts of *Common-Council* than that one, unleſs they be of very late and ſuſpected Date, muſt have vaniſh'd. For tho, as may appear by comparing it with former Acts, it makes in great meaſure the ſame Proviſions, and uſes almoſt the ſame words with ſome of them, only altering the Penalties, and Values of Eſtates requir'd for a Qualification, with ſome other neceſſary Circumſtances; yet it in expreſs Terms *repeals all former Acts* made upon that Subject.

The Subſtance of what he is pleas'd to communicate, is this; If any Freeman of the City, being duly choſen Sheriff, ſhall not perſonally appear before the *Mayor* and *Aldermen*, at their next Court, unleſs he have ſuch reaſonable Excuce as the *Mayor* and *greater part of the Aldermen then preſent ſhall allow*; and there enter into Bond to take the Office upon him in *Common-Hall*, on *Michaelmaſs* Eve; or ſhall openly refuſe; he ſhall forfeit as is there provided; *Unleſs he ſhall be duly diſcharged for want or defect of Ability in Wealth*; and ſhall nevertheleſs remain *eligible yearly* afterwards, *as if he had never been choſen.*

☞

Upon

Upon thus much of the Order it is obſervable;

1. That the Excuce to be allowed by the *Lord-Mayor* and *Aldermen*, is not for not taking the Office upon him; but for not attending at the next Court-Day; and not entring into Bond before-hand, to oblige himſelf to take the Office upon him in *Common-Hall*.

Now it is probable, that Men may have been out of Town, or detain'd by Sickneſs, or neceſſary Affairs, which hindred them from engaging at the next Court-Day to take the Office; and yet they might appear in *Common-Hall* time enough to enter upon it. And therefore the Court of *Aldermen* might be Judges of the Reaſonableneſs of the Excuce, for not engaging before-hand; or at leaſt not ſo ſoon as the Order in ſtrictneſs requires: and yet there would be no Conſequence from thence, That it is in their Power totally to excuſe from holding.

Further yet it will appear, That this of entring into Bond, was an additional Proviſion made 34 *Eliz.* and repeated 7 *Car.* 1. beyond what was in any former Order; Nor was there any Cuſtom in the City for entering into ſuch Bond. This therefore being a Creature of *Common-Council*, might be left to the Diſcretions of the *Mayor* and *Aldermen*, without the leaſt Prejudice to the Right of the *Common-Hall*.

2. The *Excuce* of which the *Mayor* and *Aldermen* are made Judges, is only ſuch as is *reaſonable*; ſo that their Diſcretion is a *legal Diſcretion*: And if the Excuce be for not holding the Office, it is evident that no Excuce for that is to be allowed, unleſs it be want of ſufficient Eſtate; in which Caſe, only, the Party is diſchargable by the Words of that Order.

3. Paying a Penalty is not properly any Excuce.

4. He is to be *diſcharged duly*; the Order does not mention by whom: But this, as it will appear, ought to be by the *Common-Hall*; either in expreſs Terms, or by implication, in their proceeding to a new Choice.

But for what Time the Diſcharge ſhall be, will, notwithſtanding that Order, be abſolutely at the Diſcretion of the *Common-Hall*. Some would infer from the Words, [*be ſhall be yearly eligible*] that the Perſon who is excuſed by the *Mayor* and *Aldermen* on paying his Fine, ſhall *not be eligible* till another Year. Whereas,

1. It muſt be remembred, that the Excuce of which they are made the Judges, is not from holding; but tho he ſhould hold, he is ſubject to the Penalty, if he does not in due time oblige himſelf to hold.

2. The [*yearly Eligible*] may be *in* every Year after that Order, when the Penalty ſhould happen to be incurred. Accordingly, the Order ſpeaks only of the Diſcharge of Perſons to be *choſen*; and without ſuch an Interpretation as this of [yearly], could not be taken to extend to Perſons *actually choſen*.

Or elſe it may be *for* every Year following his Default: according to the uſual Entries, that ſuch a Man was choſen Sheriff *for the Year enſuing*.

Beſides, by the expreſs Words, the Party is *Eligible*, *as if he had never been choſen*: And therefore he muſt remain *Eligible*, as if he had never paid his Fine; which follows the Choice.

This will be yet more evident, if we compare this with the Act of *Common-Council*, 19 *H.* 8. repeated in Subſtance by that 34 *Eliz.* with only neceſſary Alterations; and by this 7 *Car.* 1. For it will appear to have been the Intention of this, as well as of former Orders, as indeed it is of moſt Laws, to oblige Men to their Duty by exacting the Penalty: not to take the Penalty to excuſe from their Duty; much leſs thereby to exempt from Penalties, when the Offence ſhall be repeated. Vid. inf.

And it is obſervable, that the Order, 19 *H.* 8. has not the word [Yearly], which gives colour to a Diſpute; it declaring, That ſuch Perſon ſhall be *Eligible*, notwithſtanding his paying the Penalty. Vid. inf.

3. If there had been any intention of *exempting* the Offender for a Year, upon ſuffering the Penalty; it would certainly have been in the *Negative*, that he ſhould not be *eligible* till the next Year. Which, indeed, would have been no very wiſe Proviſion; and, as will appear, directly contrary to the Preamble, and declar'd Intention of that very Order.

But for certain, whatever Power may have been entruſted with the *Common-Council*; they cannot, according to the known Rule of *Law*, ſet aſide the *City's common Law-Right* of chuſing any Perſon capacitated for the Service, without a Clauſe in the Negative; that is to ſay, that they ſhall not chuſe a Perſon, diſcharg'd by the *Mayor*, *Aldermen*, and *Common-Council*, upon paying his Fine, *till* another Year.

Tho, as it will appear, it ſignifies nothing to the Merits of the Cauſe, what the *Mayor*, *Aldermen*, and *Common-Council* have done, for drawing to themſelves Juriſdiction or Authority from a greater and higher *Court* in being, and full exercice of Authority, and of which they make but a ſmall part; yet what is call'd *Argumentum* *Of By-Laws before* 7 C. 1.

ad Hominem, is never to be neglected. For to prove, that thoſe very Arguments in which Men place their Strength, make directly againſt them, is to diſarm, if not convince them.

To this end it may be of Service to ſhew, what Proviſions had formerly been made in this Matter: and what has been omitted by the *Vindicator*, out of the Order 7 *C.* 1. agreeing with thoſe former Proviſions.

In Archiv. Civ. Lib. Durthorr. f. 416. B. & Lib. O. f. 10. a. *The Act of Common-Hall*, 24 E. 3.

In the 24*th* of *E.* 3. a publick Act or Ordinance had been made, which taking notice, That "*many ſufficient* Perſons us'd to abſent themſelves out of the City "to avoid the Office of Sheriff; by means whereof *Perſons leſs ſufficient* were choſen "*thro their Default*; to the *great Miſchief* of them, and to the *Deſolation* of the City; "and ſo following to the *great Jeopardy* of the *Franchiſes* of the ſame: *Diſfranchiſes* ſuch Abſenters, and allows of no *Excuce*, unleſs they ſwear with ſix Vouchers, that they did not abſent themſelves for that Purpoſe.

This was manifeſtly made in *Common-Hall*: For one Evidence of which it is to be obſerv'd, that it was on the Feaſt of St. *Matthew*, which had been the uſual Day for ſuch *Elections*, till the Day was altered 19 *H.* 8.

And it is obſervable, that tho the *Common-Council* 19 *H.* 8. as ſome would think, to colour their Authority to alter the Day and Penalty; ſay it was *ordain'd and eſtabliſh'd* by the *Mayor*, *Aldermen*, and *Commons*, *in their Common-Council*, 24 *E.* 3. yet it is plain it was the *Common-Council* of all thoſe who aſſembled at that Day for the Election.

In Arch. Civ. Lib. O. f. 10. 18 *H.* 8.

And the *Common-Council*, 18 *H.* 8. voting that antient Act to be put in execution in the Caſe of one *Hynde*, and of all other ſuch Offenders; calls it, according to the Stile it had at the making, *An Ordinance made by* Walter Turk *Mayor*, Simon Franceys, and others, [*with the Aſſent of the whole City*].

It will further appear, that whatever *Councils* may, before the time of that old Act, have been ſummon'd to particular Purpoſes; no *Common-Council* ſeparate from them that uſed to aſſemble in the *Common-Hall*, was ever ſettled as a ſtanding *Council*, of any conſiderable Authority, before that time.

This publick Act of the whole City, having therefore abſolutely required all ſufficient Perſons choſen Sheriffs to ſerve, upon pain of *Diſfranchiſement*; and allowing of no Excuce but *Inſufficiency* in Eſtate; all Acts of *Common-Council* allowing any leſs or other Court, to *diſcharge ſufficient Perſons* choſen, or to *exempt* 'em from being choſen, muſt be void in themſelves: And, according to what the City has declared in its fulleſt Authority, is the aſſuming a Power, not only to injure thoſe Perſons, who thro the Default of others, ſerve before their turn: Which is a ſtretch beyond the Exercice of a *Diſpenſing Power* by the moſt Arbitrary of our Kings: But as it tends to the *Deſolation* of the City, and hazards the loſs of its *Franchiſes*; is beyond, and contrary to, any Power that they can pretend to for the making *By-Laws*: which can be only for the Benefit of the City. But, in truth it will appear, that *Common-Councils* after this ſolemn Declaration of the Senſe of the City, only took care to inforce the Subſtance of what was then enacted; expreſſing what ſhall be adjudged *Sufficiency*; and making other Penalties more likely to be effectual, than the Bugbear of *Diſfranchiſement*, can be with a wealthy Citizen, who is above his Trade, or any need of the Privileges of the City.

In Arch. Civ. Lib. O. f. 53. *Of the Act of Common-Counc.* 19 H. 8.

Wherefore the *Common-Council*, 19 *H.* 8. having alter'd the Day of Election to a more convenient Day than the Feaſt of St. *Matthew*; which was too near the Day on which Sheriffs were to be preſented at the *Exchequer*, making almoſt the ſame recital with the Act 24 *E.* 3. provides, That if the Perſon choſen ſhall make Default, he ſhall pay 200 *l. to the Uſe of the Commonalty of the City*; 100 *l.* of which ſhall be given to him who next ſerves thro his Default.

But expreſly declares, That every Perſon ſo making Default, "*at all times be eli-*
"*gible* unto the ſaid Room and Office of Sheriffwick; the ſaid former Act, or any
☞ "thing therein contained to the contrary, [*or the paiment of the ſaid* 200 *l. for ſuch*
"*Default*, *notwithſtanding*].

In Arch. Civ. Lon. 13 *Eliz.* *The Act of Common-Council*, 13 Eliz.

Thus the *By-Laws* in this Matter ſtood, till 13 *Eliz.* when an Order of *Common-Council* was made, expreſly affirming, or confirming, all *former Acts of Common-Council*, and *Decrees of Court*, herein.

Where *Decrees of Court* may well be taken to include the Decrees of the *Common-Hall* pronounc'd on the *Huſtings*; and conſequently that 24 *E.* 3. as to the requiring Perſons choſen to hold, without any Excuce but Inſufficiency, ſtands affirm'd 13 *Eliz.*

That of the 13*th* of *Eliz.* continued the ſame Penalty as 19 *H.* 8. but made nothing under 2000 *l.* to be a ſufficient Qualification: Yet that, as well as the Order 19 *H.* 8. ſtood in need of ſome amendment.

Where-

Wherefore 34 *Eliz.* it was prudently provided, *Of the Act of Common-Council 34 Eliz.*

1. That the Day of Election being within too few Days of the Time for preſenting the Sheriffs at the *Exchequer*, ſhould be put back to the 24*th* of *June*.

2. There being no ſufficient Means of ſecuring the City before-hand, that they might depend on a Perſon's ſtanding; a Bond was required for that purpoſe.

3. The Penalty proving over-mild, it was rais'd from 200 *l.* to 400 *Marks*; and if the Perſon choſen were an Alderman, to 600 *Marks*.

4. It was not expreſs'd, 19 *H.* 8. what Eſtate ſhould qualify a Perſon for the Service; and the Qualification required 13 *Eliz.* became inſufficient; wherefore the Order, 34 *Eliz.* requir'd 5000 *l.*

Upon theſe Accounts it repeal'd all former Orders about this Matter; that a more effectual one might take place. But then it muſt be agreed, that till the 34*th* of *Eliz.* there was no manner of colour to imagine, that paying a Fine could diſcharge any Man without Conſent of the *Common-Hall*.

And as it has appeared already, that 7 *Car.* 1. made no Alteration herein, or plac'd any Power of *diſcharging* or *exempting*, where it had not been before: Neither did that 37 *Eliz.* which that 7 *C.* 1. tranſcribes as to this Matter.

But notwithſtanding the requiſite Alterations made 34 *Eliz.* the Expenſiveneſs of *Shrievalties*, and Mens backwardneſs to hold, occaſioned the Proviſion, 7 *Car.* 1. which has given Ground, tho no true Colour, for the preſent Diſpute.

That Act repeals all former Acts of *Common-Council*: but does not pretend to repeal any Act of *Common-Hall*. So that all the Obligation which lay upon *Citizens* to be concluded by their own Conſent, publickly, and ſolemnly declared, 24 *E.* 3. ſtill remains unſhaken. *Com. Council, 7 C 1. Deucy Mayor. This Part omitted by the Vindicator.*

Nor does the Act, 7 *C.* 1. repeal former Acts of *Common-Council*, as too ſeverely keeping Men to their Duty: but, [for that the ſame have not "taken ſo good Effect "as might be wiſhed; by reaſon that the Penalties and Forfeitures therein contained, "*have been over-mil'd*: and thereby *his Majeſty's* Services have been in danger of Pre- "judice; and the good Citizens of this City, by reaſon of *the often refuſals* of the "ſaid Office of Shrievalty, have been *much troubled and diſquieted*.

The better to ſecure good *Sheriffs*, it appoints the Day of Election to be the 24*th* of *June*. "And that no Freeman of the ſaid City, ſo *to be choſen or elected* as aforeſaid, "ſhall be *exempted* from the execution of the ſaid Office of Shrievalty, by ſuppoſi- "tion, or excuce of *defect or inſufficiency of Wealth*; [except] he will voluntarily take "his Corporal Oath, before the *Mayor*, and greater part of the *Aldermen*, in open "Court of *Lord-Mayor*, and *Aldermen* for the Time being; that he then is not of the "Value of Ten thouſand Pounds, *&c.*

Now conſidering how the former Proviſions were, this is as much as if it ſaid,

Whereas according to former *By-Laws*, no ſufficient *Perſon* is to be diſcharged or *exempted* from holding Sheriff; and what was Sufficiency then, is not ſo now; but the Penalties upon *ſufficient Perſons* were *over-mil'd*: therefore every *ſufficient Perſon* choſen ſhall ſerve, upoin pain of forfeiting the ſum of 600 Marks, if an Alderman, and 400 *l.* if a Commoner: unleſs he can ſwear, as is hereby required.

Wherefore, according to the plain ſcope and meaning of this Order, and which, indeed, is expreſſed in that very Part which the *Vindicator* uſes, no Man is to be *diſcharged*, or *exempted*, but for *inſufficiency* in Eſtate.

But however that Order were; it is evident, that the Act of *Common-Hall*, 24 *E.* 3. is far from being antiquated or repealed: and is of force as to the Obligation, which the Body of the City laid upon every individual Perſon of the City, and upon all Inferiour Courts or Councils: and if the Penalty be duly taken away, that will not weaken the Sanction of ſuch a declaratory Law.

And ſurely no Man can ſay, that becauſe of this Alteration, the *exempting* or *diſcharging* a *ſufficient Perſon* from being *Sheriff*, will not be to the Prejudice of leſs ſufficient Perſons, who ſhall be oblig'd to ſerve before their turn: or that it will not tend to the *Deſolation* of the City, and to the Hazard of its Franchiſes.

As I take it, all the Citizens are precluded by this Act from ſaying otherwiſe, than themſelves did ſo long ſince by their Predeceſſors; and yet ſpeak in this their ſtanding Law.

III. I come now to conſider how the Cuſtom has been: which, by what has already appeared, could not ſignify much, if it were contrary to theſe By-Laws; and yet, as I ſhall ſhew, that is quite otherwiſe than the *Vindicator* would ſeem to believe. *Of the Cuſtom.*

In the * 18*th Edw.* II. one *John Cauſton* had been choſen Sheriff at the uſual time, he not appearing ‖ whether upon perſonal Notice by Order of the Common-Hall, or upon a Proclamation, is uncertain; the *Aldermen* and *Commons* were ſummon'd to be

* In Arch. Civ. Lond. lib. D. f. 76. b. Cauſton's *Caſe*.

‖ Solemniter vocatus.

*Depoſitus fuit à libertate & de Aldermannia.

be at *Guildhall* the *Michaelmas* Day next following: On which Day *Cauſton* was * *diſfranchiſed*, and put out of his *Aldermanſhip*.

And one *Alan Gill* was *choſen Sheriff*, and *ſworn*: Afterwards, at the *Huſtings* holden on Monday next after the Feaſt of *Simon* and *Jude*, *Cauſton* came and put || himſelf upon the Mercy of the *Mayor*, *Aldermen* [and *Commonalty*] and begg'd to be reſtored to his former Eſtate, proffering to take the Shrievalty upon him.

|| Poſuit ſe in gratia Maj. Ald. & Communitatis.

The * *Mayor*, *Aldermen* [and *Commons*] having the ſame Day *conſulted together*; and *Reſpect being had* to the *Impotency* or *Inſufficiency* of *Gill*; *Cauſton* was admitted to his former State, and ſworn Sheriff: after which he was accepted, and ſworn at *Weſtminſter*. Obſerve,

* Maj. Aldrif. & coitat. ſuper hoc eodem die conſultis. Habitoque reſpectu ad impotentiam, &c.

1. Here was a *Diſfranchiſement* by *Common Hall*, before any Act of other *Common Council* was made in the Matter: and indeed, as it will appear, before there was any other Common Council; or any Authority to make *By-Laws* given or confirmed to the City by any Charter.

2. The *Common Hall* reſtores a Man who had been diſfranchiſed.

3. It *diſcharges* a Man who had been actually ſworn Sheriff.

In Arch. Civ. L. Lib. O. f. 10. A. 18. H. 8. *Of ſeveral Elections, and two Diſcharges by the Common Hall in one Day.*

To come to Times after the ſuppoſed Settlement of the preſent *Common-Council*, and of the *Livery Common-Hall*. In the 18*th Hen.* 8. one *Thomas Hinde* was choſen *Sheriff* by the *Common Hall*: He not appearing, his Default was recorded; and the Mayor directed the Perſons that were of the Common Council of the City, *to reſort up to their Place accuſtomed, there to hold a Common Council*; and that *all others ſhould abide within the Hall.*

In that Common Council the Ordinance above-mentioned 24 *Edw.* 3. was read, and agreed to be put in execution. *Hynde* not yet appearing; it was ſhewn to the Commons by the Common Clerk, in the *Recorder's* Abſence, that inaſmuch as the City was deſtitute of a Sheriff; and alſo in conſideration, that the Day of preſenting the *Sheriff* at the Exchequer drew near, they ſhould immediately proceed to a new Election.

2*d Choice.* Then the Commons choſe *Simon Rice* on a Saturday. The Day for preſenting the Sheriffs being the next Monday, the Commons were appointed to meet on the Sunday. But *Rice* not being to be found, ſuch Perſons as were of the Common-Council were again ordered *to reſort up to their Place accuſtomed to Council*; where it was ordered, that every Citizen who had depa[illegible]ed out of the City ſince the Friday before, ſhould forfeit 20*l.*

3*d Choice.* Thereupon the Commons being ordered to proceed to another Election, choſe *William Robins*: who appearing before the *Lord Mayor*, *Aldermen*, and *Commons*, ſwore, [before them all] that he was not worth 1000 Marks; upon which Oath he was *immediately clearly diſmiſſed.*

The Commons being again commanded by the *Mayor* to proceed to a new Election; 'the *Mayor and Aldermen returned to the great Chamber*; in whoſe Abſence the Com-
4*th Choice.* 'mons choſe Mr. *William Lok*: who making *humble Supplication* to the Mayor, Alder-
'men [and Commons] ſhewed them, that conſidering his Youth and great Charges,
'*he was nothing apt nor liable to take the Office upon him*: which *Mayor*, *Aldermen* [and *Com-*
'*mons*] having Pity and Compaſſion of the ſaid Mr. *William Lok*, *upon his ſaid Declara-*
'*tion, clearly diſcharged him for that time, without making of any Oath.*

5*th Choice.* The Commons being commanded to proceed to a new Election, the Mayor and Aldermen withdrew as before, and the Commons choſe Mr. *Nicholas Lamberd*, who was ſworn Sheriff.

At this time it is evident, beyond Contradiction, that though the *Lord Mayor* gave the Rule, as Chief in the Common-Hall; and he, with the Common-Council in the Council-Chamber, ſet the Penalty upon Abſenters; the Diſcharge of the Perſons choſen was in the Common-Hall, and the Act of the Common Hall.

In Arch. Civ. Journal Seym. f. 163. A. 21 H. 8. Ralph Rowlet's *Caſe.*

Within three Years after this the Authority of the Common-Hall in this Matter, excluſive of all other Powers, is aſſerted in a very remarkable Inſtance.

They having choſen Sheriff one Mr. *Ralph Rowlet*, an Officer in the Royal Mint; the *King* wrote to the Mayor and Citizens, ſhewing that Mr. *Rowlet* was *occupied in the Charge of the Mint*; *and therefore will'd* them, *having Knowledg of his Privilege, no farther to inquiet him*, but to proceed to a new Choice. 'Whereupon it was ordered, decreed 'and determined, by the Mayor, Aldermen, and Commons, that the Perſons there 'named ſhould repair to the King in the Name of the Mayor, Aldermen, and Citizens, '*in their moſt humble manner to beſeech him, that the Liberties, Cuſtoms and Franchiſes of the* 'City, *by his moſt noble Progenitors granted to the ſame, and by his Highneſs ratified and con-*'*firmed, may ſtand, and be in their Strength and Virtue, concerning the ſaid* Ralph Rowlet; '*that he may take upon him the ſaid room of Sheriffwick, according to the Effect of the ſame.*

The Perſons ſo deputed having attended the *King*, returned with a ſecond Letter; directed, *to our truſty and right well beloved the Mayor of our City of* London; *and our truſty and well beloved the Aldermen, Citizens, and Commons of the ſame.*

Where-

W herein, as he ſays, *Tendering the entire Conſervation, and Maintenance, of the Liberties and Privileges of the City*; and ſeeing that his learned Councel were abſent; for which Cauſe he was in ſuſpence and doubt, whether his Letters Patent to *Rowlet* were of ſuch Force, that by Virtue of the ſame he ought to be *diſcharged*; he deſires them to proceed to the Election of ſome other Perſon, [*ſo to diſcharge*] *the ſaid* Ralph Rowlet: *Not in Contemplation of the ſaid Letters Patent, but of thoſe Preſents, being only of requeſt.*

" Whereupon it was agreed, by the ſaid *Mayor*, and *Aldermen*, that a *Common-*
" *Council* ſhould be warned againſt the Vigil of St. *Michael* the Arch-Angel, con-
" cerning the ſame: *And* [*to their Advyſes*] *in the Premiſes.* The *Common-Council*
" meeting, it was *then* and *there* agreed, according to the Tenor, and Effect, of the
" ſaid Letter.

It muſt be own'd, That in the Entries of the *Common-Council* there are theſe words; " It is agreed, That the ſaid *Ralph Rowlet ſhall be diſcharged* of the ſaid Of- *Fol. 165.*
" fice for this time only: And that thereupon the *Commons* proceed to a new Election.

Where they do not pretend actually to diſcharge him, but agree that he ſhall be diſcharged: Which ſhews, that the Diſcharge was to be in the Place where another was to be choſen: And they only adviſed this, or recommended it, to the *Common-Hall.* That this was only by way of Advice appears farther; not only by the declared End for which they were ſummon'd; but by what follows the former part of the *Journal*; which, after mentioning what was done in *Common-Council*, has theſe words; " And *then immediately*, the ſaid Letter was *openly read in the* Guild-Hall
" *aforeſaid*, [*to all the Commons in their Liveries, then and there aſſembled.*] And *in like*
" *manner were agreed, in manner and form as the ſaid Common-Council had agreed and*
" *granted.* And *thereupon*, the ſaid *Mayor*, *Aldermen*, and *Commons*, *by one Aſſent, and*
" *Conſent, proceeded to the Election of a new Sheriff, in the ſtead and place of the ſaid*
" *Mr.* Rowlet. Here 'tis obſervable,

1. That it was held and declared, whether by the *Common-Hall*, or *ordinary Common-Council*, it matters not; That the *King*'s Prerogative to require the Service of his Subjects, could not defeat the Right of the City, to employ its Citizens: Tho' the *King* had exerciſed his *Prerogative*, before the City had applied that Right to the particular Perſon.

2. That the *King* did not think it in the Power of the *Mayor*, and *Aldermen*, or any other Body of Men, without the *Commons*, to diſcharge the Perſon choſen.

3. That he ſuppos'd the Choice of another Perſon, to amount to the Diſcharge of the firſt.

4. That tho' the *Common-Council* among themſelves agree, that the Perſon ſhall be diſcharged; they did not inſiſt upon this Order or Vote, as concluſive to the *Common-Hall.* But caus'd the *King*'s Letter to be read in *Common-Hall.* Where all agreed *in manner and form as the Common-Council* had done before: That is, they agreed to diſcharge the Party. So that the Agreement of the *Common-Council* was but matter of Advice, or a probationary Order; which wanted the *Placet*, or *Fiat*, of the *Commons.*

The next Caſe which I find to this Point, is that of *Richmond*, 33 *H.* VIII. In which, as I am informed, the Aſſerters of the Authority of the *Common-Council* much triumph: And yet it will prove to have been the Effect of a ſtrong Prepoſ- ſeſſion; or of not attending to thoſe governing Paſſages and Expreſſions, which will fully explain what may ſeem doubtful in this, or other Entries of the like kind. *In Arch. Civ. I: Q. f. 35. a. 33 H VIII. Richmond's Caſe.*

Richmond having been choſen by the *Common-Hall*, and his Election certified to the *Mayor*, and *Aldermen*, in the *utter Chamber of* Guild-Hall; the *Mayor*, and *Aldermen*, are there ſaid *lovingly* to have *confirmed and allowed* the ſame.

After this, the *Lord-Mayor*, and his *Brethren the Aldermen*, *returning* [*into the Hall*] " *Richmond* came up unto the *Lord-Mayor*, and his Brethren the *Aldermen*, and Note, *This was*
" [then] and [there] made right humble and hearty Suit, Petition, and Requeſt, *upon the Hu-*
" both [unto them] and [*unto the whole Commons there preſent*] That, foraſmuch as *ſtings in*
he had not ſufficient Eſtate, " It might pleaſe [them all] to be ſo good *Lord* and *Guild-Hall.*
" *Maiſters* unto him, and to diſcharge him thereof again.

Notwithſtanding his Allegations and Reaſons for his *Excuſe* and *Diſcharge*, becauſe
" it ſeemed [unto them] that he was a Man very meet and hable for the ſame,
" his ſaid *Petition* and *Requeſt* would not, nor *was not granted unto him.*

He proffer'd his Oath, that he was not worth 1000 Marks: But the *Mayor*, *Aldermen*, and *Council of the City* anſwer'd, That ſuch Oath was not ſufficient without Six Vouchers, according to the late *Act of Common-Council.*

However, he ſwore to his Inſufficiency, before the *Mayor*, *Aldermen*, and [*Commons*;] "Whereupon, foraſmuch as his own Othe did not diſcharge him, according "to the Laws and Uſages of the ſaid City, of and from the ſaid Office; but that he "ſtood ſtill, and remained chargeable to the ſame, and expreſly refuſed, and denied "there openly to take it upon him, and to meddle withal; he was *ſent* to Ward "for his *Diſobedience*, and *Obſtinacy*, *by the whole Court* [and *Conſent* of the *Commons*] "there aſſembled.

After this, he was ſeveral times brought in Cuſtody before the *Mayor*, and *Aldermen*, and as often remanded; till at laſt he agreed to pay 200*l.* to the uſe of the City, for *his Diſcharge*; and gave Bond for the Money.

Thereupon he was diſcharged from his Impriſonment.

Then "the *Mayor*, *Aldermen*, *Common-Council*, and [other *the Commoners aſſem-*"*bled* at *Guild-Hall*, for the *Diſcharging* of the ſaid *Richmond*] of and from the ſaid "Office, and for the *Election* of another.

"Whereupon, great part of the Premiſes, and the Circumſtances of the ſame, "by Mr. *Recorder*, firſt to the *Common-Council*, and afterwards [to the *Commons* "aforeſaid] [then] and [there] being *ſubſtantially*, *diſcreetly*, and *prudently*, pub-"liſhed and declared [at length] the ſame Mr. *Richmond* was [then] and [there] "by the ſaid *Mayor*, *Aldermen*, and [*Common-Counſail there holden*] clearly *diſcharged* "for that time only, of and from the ſaid Office, *for his ſaid Fine.*

Here they will take no notice of what was tranſacted in the firſt *Common-Hall*; where *Richmond* petition'd [the whole *Commons*] as well as the *Mayor*, and *Aldermen*, for a Diſcharge, which he could not then obtain; and further, the *Commons* agreed, That he ſhould be committed to Priſon: Wherein they, with the *Mayor* and *Aldermen*, acted as a Court of Juſtice, and *Common-Council.*

If the Council of the City, which urg'd an Act of *Common-Council*, were the *Common-Council* it ſelf; then it is evident, that they acted there but as of Counſel or Advice to the *Common-Hall*; in which that Entry places the Authority of *Diſcharging.*

If they were the Cities Counſel *at Law* who mention'd this; then the Common-Council had no ſhare in any part of that Tranſaction, otherwiſe than as part of the Common-Council in Common-Hall aſſembled, who conſented to the committing *Richmond.*

Still ſome will hang upon that part of the Entry concerning the Second Common-Hall, where *Richmond* is ſaid to be diſcharged by the ſaid Common-Counſail *there holden.*

When it manifeſtly was the very ſame Body of Men, to whom he petitioned for a *Diſcharge*, which he could not then obtain; and by whoſe Conſent he was committed to Priſon for his Diſobedience and Obſtinacy.

To give colour to their Senſe, they muſt have it, that tho' *Richmond* ſued to the Mayor, Aldermen, Common-Council, and Common; who would not then diſcharge him; and tho', after he had fined, all met to *diſcharge* him, and chuſe another; yet the Commons met only to chuſe another; and the Mayor, Aldermen, and Common-Council, to diſcharge him.

And tho' the Diſcharge is plainly ſhewn to have been in Common-Hall, where the Common-Council cannot pretend to act as a Council, with Authority; and that [at length] after the Commons, as well as the Common-Council, had been applied to by the *Recorder*; yet they muſt fanſie, that the Common-Council withdrew out of the *Common-Hall*, and went up to the *Council-Chamber*, to make a particular Order for his *Diſcharge.* Of which there is not the leaſt mention or intimation, in relation to that Second *Common-Hall.*

But, as this is meer Imagination, not only without ground, but directly contrary to the careful and ſolemn entry of the Proceedings, from the beginning to the end; it is evident, That the Common-Council was but part of the Common-Counſail, there holden, conſiſting of Mayor, Aldermen, Common-Council, and other Commoners.

Vid. *Infra.* Farther yet, if it ſhould appear by other Evidences, as I make no doubt but it will, That the Commons of the City, with their Officers, and Council, aſſembled in their *Common-Hall*, or other *Folk-mote*, in their own Perſons, or by Repreſentation; have, from long before the *reputed Conqueſt* to this Day, been and continued the Common-Council of the City; and that the *Common-Hall*, wherein *Richmond* was diſcharged from ſerving Sheriff, was a true Repreſentative of all the Commons; it will be certain that all together were properly called a *Common-Counſail.*

And if the *Common-Hall*, as now compos'd, be the ſame with that which diſcharg'd *Richmond*; it will alſo follow, That the Right of *Diſcharging* belongs to this

Com-

Common-Hall: And that it is the true Common-Counſail, or rather Council, of the City.

Take all the Precedents together, as they ſtrengthen and give Light to one another; and, I think, there can be no queſtion, but they will ſo explain and govern following Orders of Common-Council, that not one of them ſhall be taken as a Precedent to the Contrary: Unleſs it can be ſhewn, that the Perſon diſcharged by the Common-council, has been look'd upon in Law as duly diſcharged; before the Commons have allowed of the *Diſcharge*, by proceeding to a new Choice; and even tho' they abſolutely refus'd to chuſe again.

However, leſt it ſhould be thought, that all the Entries ſince the Reign of *H.* VIII. to 7 *Car.* I. (when the Order was made on which the *Vindicator* lays his chief ſtreſs) are on the Side of the Common-Council; I ſhall give the Words of the *Journal* of the *Common-Hall*, 1 *Eliz.* which may govern all the Entries to 7 *Car.* I. *Of a Diſcharge in the Common-Hall*, 1 Eliz.

Common-Hall.

In Congregatione Majoris, Aldror' & Communitatis, Civitatis Lond' *apud* Guihalde, xxi *Die* Sept' *Anno Reg'* dnæ Eliz. *Dei Grat' Ang' Franciæ & Hiberniæ Reg' Fidei Defenſor' &c. primo.*

"Foraſmuch, as Mr. *Walter Jobſon*, Citizen and Cloth-worker of the ſaid City of "*London*, who was lawfully elect and choſen the 11th Day of *Auguſt* laſt paſt, by "the Commons of this City, one of the Sheriffs of the ſame City, and of the County "of *Middleſex*, for the Year next enſuing after the Feaſt of St. *Michael* the Arch-"Angel now next enſuing; hath ſince that time ſignified and given *ſufficient know-"ledge* unto my ſaid Lord-Mayor, and Aldermen; that he, by reaſon of Sickneſs and "debility of Body, wherewith he a long time hath been and yet is ſore vexed, de-"tain'd, and troubled; as he ſaith, is not in any wiſe able, to take upon him the "exercice and execution of the ſame Office accordingly.

"*In conſideration whereof* [*the ſaid* Commons] have this Day eftſoons aſſembled "for the Election of one other able and ſufficient Perſon, to bear and exerciſe the "ſaid Room and Office of Shrievalty for the ſaid time, in the ſtead and place of "the ſaid Mr. *Jobſon*; *did this Day elect and chuſe* Mr. *Roger Martin*, Alderman, one of "the Sheriffs of the ſaid City and County of *Middleſex*, to have, occupy and exer-"ciſe the ſaid Office of Shrievalty, from the Feaſt of St. *Michael* the Arch-Angel "now next coming, unto the Feaſt of St. *Michael* the Arch-Angel then next en-"ſuing, *according to the ancient cuſtom of this* City *in that behalf.*

Here obſerve;

1. That in the Firſt of *Eliz.* the *Common-Hall* was a Court which kept the *Journals* of its Proceedings.

2. That the Matter of which the Mayor and Aldermen had taken Cognizance, was not within any *By-Law*: So that they could not pretend to any Authority to *diſcharge*. Nor is it ſaid that the Party was *diſcharged*, tho' they were ſatisfied that he was not able to hold. Wherefore this Matter repreſented to the *Common-Hall*, could be no more than as the Opinion, and Advice, of the Mayor and Aldermen.

3. Accordingly, the *Common-Hall* takes the Matter into *conſideration*: For they, being aſſembled for the Election of another, did elect, in *conſideration* of the Matter repreſented to them in *Common-Hall*.

4. To put this Matter beyond Controverſie, it is obſervable, That no Common-Council was held upon this Occaſion; and there is no colour of Authority, or ancient Uſage pretended, for the Mayor and Aldermen to *diſcharge* without the Conſent of the Common-Council. Therefore Mr. *Jobſon* muſt have been *diſcharged* by the *Common-Hall*, or otherwiſe he continued Sheriff; which, 'tis certain he did not.

5. No other *diſcharge* of the Party is mentioned, or implied, than the *Common-Hall's* proceeding to a new Choice.

And if in any following Inſtances they have proceeded to new Elections, upon ſuch Inducements as they had at the reſpective times, whether upon taking Fines, or otherwiſe, the Entries of Clerks can be no Prejudice to their Right ſo manifeſt upon many Entries in the *Common-Hall Journals*.

According to what is ſaid in *Slade's* * Caſe, The Returns of Sheriffs, or Entries of Clerks, without *challenge of the Party*, or *conſideration of the Court*, being contrary to *common Law*, and *Reaſon*, are not allowable. * 4. Rep. f. 93.

And

And therefore, whatever may have been entred in the Books of the *Common-Council*, it ſhall not be ſuppos'd that the *Common-Hall* ever admitted any Man to have been diſcharg'd, till they had actually conſented to it; or did it virtually, in chuſing another in his ſtead.

And the ſame may be applied to *Exemptions*, of which I will admit there are ſome Inſtances to be found in the Books of the *Common-Council*.

That if the By-Laws and Cuſtom were on the Side of the Lord Mayor, Aldermen, and Common-Council: Such By-Laws and Cuſtom would be void in Law.

4*th*. That no Man was ever duly *diſcharged* or *exempted*, till there was the Conſent of the *Common-Hall*, may ſufficiently appear by what I have ſhewn of the *By-Laws* and *Cuſtom* in this Matter.

And yet if both favour'd the *Mayor*, *Aldermen*, and *Common-Council*, I ſhall make it evident, that they would be void in Law.

To which purpoſe I ſhall ſhew,

1. That the *exempting* a Perſon from being choſen Sheriff within the City of *London*, and the *diſcharging* or *amoving* one choſen, is contrary to the *common*-Law Right of the *Electors*.

2. That it is contrary to their Charters, confirm'd by Parliaments.

3. That *Magna Charta*, and other Acts of Parliament, declaratory of the Common-Law, have ſo veſted the *exemption* and *diſcharge* in the *Electors*; that if their free Conſent out of Parliament might diveſt them of it; for certain nothing leſs can.

4. That they have never parted with, or quitted it: Yet if they had, are reſtor'd to their Right by his preſent Majeſty's gracious Act of Reſtitution.

That for any to amove or diſcharge Sheriffs, but the Electors, is contrary to their Common Law-Right.

Lib. K. f. 120. temp. H. 6. A Canon of *Waltham* having, in the Reign of *H*. 6. been arreſted by a Serjeant of the City, in the Cloſe of St. *Martin le Grand*; the Legality of it coming in queſtion, becauſe of the pretended Privilege of that Place, granted by *W*. 1. there called *Conqueror*.

" The *Mayor*, and *Citizens* juſtify, and ſay, All the Cloſe is and ought to be, and " of *all time beyond memory of Man* was, of and in the Liberty and Juriſdiction of " the ſaid City: For the verifying which they ſay and ſhew, divers Reaſons and " Evidences. Firſt, they ſay, That the ſaid City is, and beyond memory of Man " was, the Capital City of the whole Kingdom of *England*, before the reſt of the " Cities and Towns of the ſame, adorn'd as well with Honours, as Liberties; and " very many free Cuſtoms of divers Kinds: For it was founded *of Old* by the fa- " mous Progenitors of our Lord the King that now is, *after the likeneſs, and manner,* " *and in memory of Antient* Troy *the Great:* and from hence was long called *Trino-* " *vant*. Which City, in the time of *St. Edward*, *King* and *Confeſſor*, and [*of all* " *time before*] was of it ſelf, and *in it ſelf* [*one ſole and entire County*], and one ſole " and entire Juriſdiction and Liberty, [*held at Farm by the ſaid Citizens* and *their Pre-* " *deceſſors*] of the ſaid King and his Predeceſſors. And the ſame Citizens then, and *from* " *all the time aforeſaid*, by reaſon of their ſaid Juriſdiction and Liberty, have among " other, ſuch Liberties and free Cuſtoms: to wit, *to chuſe and make of themſelves*, " every Year, certain principal Officers in the ſaid City, who may faithfully anſwer " the King of the ſaid *Farm*, and immediately under *him*, *the People of the ſaid City*, " and others reſorting to the ſame, in Peace and Juſtice according to its *antient* " *Laws and Cuſtoms*, to rule. And alſo they could, ought, and *for all the times afore-* " *ſaid*, *us'd* to make other *Miniſters under them*, in aid of the ſuſtaining and exer- " ſing the Premiſſes: So that all the ſaid time, no Summons, Attachment, Diſtreſs, " or Execution, ought, or us'd to be made, in the Place where the ſaid Cloſe " now is, nor elſewhere in any Part of the City; unleſs by the Officers and Miniſters " aforeſaid, except on their failure.

" And they ſay, That the ſaid *Lord* William *the Conqueror*, before the Foundation " of the Church aforeſaid, and the making the ſaid Charter, of which before was " mention, *by the Authority of his Parliament*; and by two Charters which the ſaid " Mayor and City here proffer: to wit, by one of them demiſed to the Citizens of " *London*, the whole ſaid City and County, with all its Appendences, Things, and " Cuſtoms, to them in any manner appertaining.

" And by the other he granted, and by the Authority aforeſaid confirm'd, to the " ſame *Citizens*, and their Succeſſors, that they ſhould have the ſaid, and all other " their Liberties and Free Cuſtoms unhurt, which they had in the time of the ſaid " holy King *Edward* his Progenitor: and that they ſhould peaceably uſe and enjoy " them, *&c*.

And, ſpeaking of other Kings, his Succeſſors,

" Which Kings ſeverally, ſome by their Charters, and ſome by their Charters " and the Authority of divers their Parliaments, granted and confirmed, *to the* " *ſaid Citizens* and their Succeſſors, all the ſaid City and County, with all the Rights,

" Juriſ-

" Juriſdictions, Liberties, and Free Cuſtoms before-mentioned, with their Appur-
" tenances whatſoever [*in Fee Farm*].

Indeed, I find no Judgment upon this, but it ſeems the Plea quieted the Diſpute. That the Plea was rightly founded, may appear from two conſiderable Authorities, not to name more.

1. The * *Confeſſor's* Law (received and ſworn to by *Wil.* 1. more than once) out of which the Paſſage concerning the Antiquity of the City, and its being founded in Imitation and in Memory of Old *Troy*, is tranſcribed: That Law derives the City's Laws, Rights, Liberties, and *Royal Cuſtoms*, from its firſt Foundation; and ſays it has preſerved them with an *entire Inviolability*; and conſequently affirms thoſe Laws, Rights, Liberties, and *Royal Cuſtoms*, to have been at *Common Law* before any Charter.

A † Charter paſſed in Parliament 1 *E.* 3. and at the Requeſt of the City, expreſs'd by the *Recorder*, ‖ enrolled in the *King's-Bench* ſoon after.

This Charter, mentioning the *great Charter's* Confirmation of all the City's antient Liberties and Cuſtoms, adds, that at the making of that Charter, and in the times of *Edward* King and Confeſſor, and of *William* the Conqueror, and other *E.* 3*d's* Progenitors, the ſaid *Citizens* had divers Liberties and Cuſtoms, as well by Charters of Kings, as without, *of antient Cuſtom:* Where the Cuſtom is laid from before the *reputed Conqueſt*. And thus their Plea above, which I find likewiſe pleaded or prepared, * 25 *H.* 8. is in effect warranted by Act of Parliament.

It appears that the Charter to St. *Martins*, which occaſioned this Plea, was granted 2 *Will.* 1. and that in *Parliament*, for it was at the Queen's Coronation, which, as appears ‖ by the old *Rituals* and Hiſtories, could not then be without the Conſent of the *States:* Though in the Charter to be ſeen in the *Tower* by *inſpeximus*, there are Words exempting the Place from all ſecular Juriſdiction; yet the whole County of *London* being the *City's Farm*, Juriſdiction in every part of it was ſuch an *Incident* as could not be taken away by general Words in an Act of Parliament: According to a Caſe, * 2 *E.* 3. wherein it was adjudged, that though the Stat. of *Weſtminſter* gave an Attaint againſt a Jury for a falſe Verdict; an Attaint would not lie upon a Verdict in the City of *London*, becauſe of the Credit the Oaths of a City-Jury had by Preſcription before the Statute.

Since therefore the County of *London* is the *City's Farm*, and of ſuch a Nature, that what belongs to the *Farm* is not ſeparable by the general Words of an Act of Parliament; neither will the diſcharging the Sheriffs otherwiſe than at the Pleaſure of the *Electors*, that is, of the City duly repreſented, at leaſt for that Purpoſe, be to be taken from the *Electors* by a leſs Authority than a *Parliament:* And if a *Parliament* cannot do it by general or doubtful Words, much leſs can any others.

But to evince that the *diſcharging* or *amoving* is *incident* to the Right of the Election, I muſt obſerve, that in other Counties, which are not of Fee, though the Choice of Sheriffs was at common Law in the *Freeholders* of the Counties, yet the Sheriffs had their Commiſſions and Authority from the King. And as they have their ſeveral *Bailywicks* under them, they were and are the *King's Bailiffs* of the whole County; which in many Records is ſtiled their † *Balliva* or *Bailywick*.

And though ordinarily the King conſtitutes them his Bailiffs for a Year, they at Common Law were *amoveable* at his Pleaſure. But as the County of *London* is the City's *Farm*, it is the *Sheriff's Bailywick* under the City, whoſe Election and Confirmation conſtitutes him Sheriff, without any Commiſſion from the King.

And becauſe the City is anſwerable to the King, if the Sheriff be not able, (though not for his Crimes, which ſeveral Charters provide againſt) the Sheriffs uſed antiently to find ‖ Sureties to indempnify the City.

The Sheriffs therefore being but Bailiffs to the *Electors*, in the Nature of the thing, are *amoveable* or *diſchargeable* by them; and conſequently by them only: unleſs we ſuppoſe two ſupreme Powers within the City; which, according to * *Grotius*'s Argument againſt the Plurality of Gods, are abſolutely inconſiſtent.

2. If there were any Queſtion, whether the diſcharging Sheriffs at Common Law belongs to the *Electors*; Charters confirm'd by *Parliament* put it beyond Diſpute.

In a Charter † 1 *Joh.* after the Confirmation of the Sherifwick of *London* and *Middleſex*, with all the Cuſtoms and Things to the *Sherifwick* belonging, at the Rent of 300 *l. per annum*, with a ſpecial ſaving to the Citizens of *London* of all their Liberties and free Cuſtoms; it adds, 'Moreover, we have granted to the Citizens of *London*, 'that they from among themſelves may make Sheriffs *whom they will*, and *amove them* 'when they will.

* Lambert's Archaionomia, f. 148. Fundata enim erat ad inſtar & ad modum & in memoriam magnæ Trojæ & uſque in hodiernum diem, &c.

† Vid. Rot. Cart. 1 E. 3. m. 35. n. 76. By Inſpex. 1 R. 2. m. 31. n. 22. & 2 E. 4. pars 5. m. 23.

‖ Placita coram Rege apud Ebor. 1 E. 3.

* Journal Seym. f. 385. *b.* 25 H. 8.

‖ Vid. Bib. Cot. ſub effigie Claudii A. 3. Coronatio Regis Athelredi An. 969. & H 1. An. 1100.

* Lib. E. f. 174. a 2 E. 3 coram Rege.

Vid. Mitton's c. 4. rep. *The King even before he makes a Sheriff grant away the Office of County Clerk, the King's Grant is void, becauſe it is an Incident to the Sheriff's Office.*

† Vid. Selden's *Tit. of Honour*, f. 587. 15 Johannis omnes milittes Ballivæ tuæ qui ſum moniti fuerunt ad nos, &c. Rot. Claus. 38. H. 3. m. 7. n. 12. d. Omnes de Ballivâ tuâ qui tenent 20 librat. terræ, &c.

‖ Lib. C. f. 111. n. 32. E. 1.

* Vid. Grot. de veritate Religionis Chriſtianæ.

† Vid. *this in the printed Charters*, p. 13. *and in ſeveral* Inſpeximus's.

This is not only confirm'd in general by that King's *Great Charter* at * *Runny-mead*, or *Redden-mead*, and by *H.* Third's *Great Charter*, under the Cities Liberties, and free Cuſtoms; but by the expreſs words of a Charter, 11 *H.* III. and by two Acts of Parliament at the leaſt; one 1, the other 7 of *R.* II. In the firſt of which this is preſerv'd, || among other Rights, *tho' not us'd:* And in the later, *tho' not us'd, or abus'd.*

And all of them are repeated and confirm'd †, 2 *E.* IV. And that of 7 *R.* II. is exemplified under the Broad-Seal *, 8 *J.* I.

It is obſervable, That the managing Part of the City took Care to leave the *Parliamentary Confirmations* of this, and other Clauſes; which, poſſibly, they thought too much to favour the Commonalty, out of the Confirmation of their *Charter*, 16 *C.* II. However, the Acts of Parliament ſtood in no need of Confirmation; and the late Exemplification, of the moſt conſiderable of them, confirming the reſt, removes the Pretence of their being antiquated, or loſt, by any ſuppoſed diſuſe.

And, beſides what I have mentioned, according to the Cities Plea to the *Quo Warranto* in *Michaelmas*-Term, 1681. The entire Benefit of theſe *Charters*, in this Point, was confirm'd, 5 *H.* VIII. 2 *E.* VI. 1 *Mar.* 4 *Eliz.* 6. *J.* I. 14 *C.* I.

To which, not to mention others, I may add the Statute, || 7 *H.* IV. which, after providing that Holy Church, the *Lords-Spiritual*, and *Temporal*, and all the *Cities* and *Burghs*, have, and enjoy, all their *Liberties* and *Franchiſes* before that time granted; adds, "And that the *Great Charter*, and the *Charter* of the Foreſt, and all the Ordi-"nances and Statutes made in the time of our Sovereign Lord the King, and in the "time of his Progenitors, [not repealed] be firmly holden and kept, and duly "executed, in all Points.

It may be material here, to ſhew how the Law, as to the Cities *Liberty* and *Franchiſe*, for the *chuſing* and *amoving* Sheriffs, was taken in the next Reign after the making that Statute.

In the 6th of *H.* V. a Sheriff dying in his Shrievalty, the Mayor, Aldermen, and the more ſufficient of the Commons, that is, as will afterwards appear, the Livery-men, were ſummon'd † before the King in Council, to ſhew their Right to chuſe, upon the death of a Sheriff. They appearing, anſwer by the Recorder, "That, "|| among other, the *Liberties* granted to the Citizens of *London*, and ratified in di-"vers *Parliaments*, it is contained, That the Citizens of *London* may make Sheriffs "of themſelves, *as often as they will*, and amove them *when they will*. By reaſon of "which *Liberty* they ſay, That often hitherto, after they have choſen Sheriffs from "among themſelves, who have *behaved themſelves* ill, or died, as it now happened, "they have choſen others in their ſtead.

This Plea was then allowed by the Counſel, or before the King in Council, where ſuch Matters us'd to be determin'd. "And it was ſaid to the Mayor and Commons, "That they ſhould uſe as they had done hitherto.

Where the Chuſers and Amovers are agreed to be the ſame: And that theſe were the Mayor and Aldermen, with the more ſufficient of the Commons.

And, if it will appear, that theſe were the Livery-men; here is a Judgment of that time, That, according to the *Charters* confirm'd by Acts of *Parliament*, the *chuſing*, and *amoving*, or *diſcharging* of Sheriffs, belongs to the *Livery-men*, and, conſequently, to none beſides.

If the above-mentioned *Charters* and Acts of *Parliament*, in affirmance, as I have ſhewn, of the *Common-Law*, are not enough to preſerve the Cities Right of *amoving*, or *diſcharging* Sheriffs, as well as chuſing them; and if they may not chuſe Perſons *exempted* by Order of a Common-Council, as well as others; it is in vain to talk of ſuch a thing as Legal Rights: For none can be more firmly and plainly eſtabliſhed.

If it be ſaid, That the City has this, but not the Citizens which meet in *Common-Hall:* It may as well be ſaid, That they are not the *Electors* in any Caſe; for whoever are, by Law, the *Electors*, have Right to diſallow *Exemptions* by others, even by the King himſelf, as in *Rowlet*'s Caſe; and to *amove*, or *diſcharge*, in as full a manner as they have the *chuſing*.

Farther yet, Whatever is inconſiſtent with an undoubted Right, is abſolutely void; but for the *Common-Council* to diſcharge a Perſon whom the *Common-Hall* and they themſelves as Part did chuſe by an undoubted Right, is inconſiſtent, as it makes the Right uſeleſs; and therefore ſuch a Diſcharge muſt be void. And the ſame will hold againſt Exemptions; and indeed, if others may exempt, they cannot chuſe whom they will. In either Caſe they are defeated of what the *Common-Law* and *Charters*, confirmed in Parliament, veſted in 'em.

3. Since

* *A uſual p'ace for Great Counils in the open Air. Hence call'd* Pratum Concilii.

Vid. Rot. Cart. 7 *R.* 2. *m.* 8. *n.* 11. *A Charter of* Cnute's, *with the Advice of his* Redgynen *wiſemen.*

|| Rot. Cart. 1 *R.* 2. *m.* 31. *n.* 37. 7 *R.* 2. *n.* 37.

7 Rot. Cart. 2 *E.* 4 pars 5. *m.* 23.

* Vid. Lib. Q. Arch. Civ. L.

|| 7 *H.* 4. *c.* 1.

Lib. *Dunthorn*, *f.* 442. *a.* 6. *H.* 5.

† Mota queſtione inter Dominos de Conſilio Regis mitteba-tur, *&c.*

|| Quòd inter ceteras liber-tates Civibus *L.* conceſſas ac in diverſis Parl. Ratifi-cat. *&c.*

Vid. *Infra.*

5. Since therefore, they remain the *Electors*, it will be a great Queſtion, whether they could barr themſelves, or ſucceeding *Common-Halls*, from a Right ſo *incident*, and *annexed* to the *Election*, as the *amoving*, or *diſcharging*, a Perſon *choſen* Sheriff; or *exempting* Perſons being choſen; according to the Notion of Sir *Robert Filmer*, and others, of Supreme Power (in which they miſtake only for want of obſerving how the Power, which is in its Nature indiviſible, is ſeated, and enjoyed.)

A Queſtion, whether the Cōmon Hall *could barr themſelves of this Right.*

To this Matter I may well apply what that great Man, the late Earl of *Clarendon*, ſays of the Suppoſition, That our Anceſtors had abſolutely ſubmitted to the Will of a *Conqueror*.

"If it * can be ſuppoſed, That any Nation can concur in ſuch a Deſignation, and "deveſting themſelves of all their Right, and Liberty; it could only be, in reaſon, "Obligatory *to the preſent Contractors:* Nor does it appear to us, That their Poſte- "rity muſt be bound by ſo *unthrifty a Conceſſion* of their Parents.

* *Survey of* Hobbs's Leviathan.

To which I may add that of ‖ *Grotius*; "No Man can oblige himſelf by way of "Law, that is as a Superior: And hence it is, that the Authors of *Laws* have Right "to *change their Laws*; yet any Body may be oblig'd by his own *Law*; not di- "rectly, but by conſequence, (that is to ſay) as he is a Part of the *Community*; ac- "cording to natural Equity, which requires that Parts ſhould be compos'd with re- "ſpect to the Whole.

‖ Grot. de Jure Belli & pacis, *lib.* 4. *c.* 12.

But here the *Electors* ſtand in the Place of the whole Body of Citizens, and therefore might at any time re-aſſume the Right which belongs to them as *Electors*.

However, that they ſhall not be thought to have parted with it by Implication, in ſuffering a Common-Council to act as if the ſole Authority in this Matter reſted in them; tho' for a longer time than can be pretended here, may, beſides the reaſon of the thing, appear:

Not parted with by Implication from a ſuppos'd Cuſtom.

1. From obſerving ſome parallel Caſes.

2. From the Reſolution of Judges, directly in this Point.

Firſt, I may obſerve ſome Caſes, of many, wherein a greater length of time than is ſuppoſed here, can take away no Right.

1. Diſcontinuance of part of the Services, belonging to Tenure, when the Lord of a Mannor has been poſſeſſed of other Part, or at leaſt of the Principal; as in *Bevil*'s Caſe. 4. Rep.

According to which, poſſeſſion of the Right of Chuſing carries with it the incidental Right, of *Exempting* and *Amoving*, or, *Diſcharging*.

2. Where a Cuſtom which has long obtain'd, is contrary to the Common-Law Right, confirm'd by *Magna Charta*, of a conſiderable Body of Men.

Thus from the Precedent in the Caſe of the Earl of *Warwick*, 14 or 15 *H.* VII. a Cuſtom and ſuppos'd Prerogative had obtain'd, for the King to name a ſelect Number of Peers to try any one of them for his Life. And this is ſupported not only by the Opinion of the Lord *Coke*, but by the Year-Book, 1 *H.* IV. where there is a formal Account of the Trial of an Earl of *H.* in ſuch manner, at that time. 1 *H.* IV. *f.* 1.

When it appears by the Summons to *Parliaments* at that time, that there was no other Earl of *H.* beſides the Earl of *Huntington*: And the Record * of 2 *H.* IV. ſhews, that he being taken in open Rebellion, was executed by the People without any Legal *Proceſs*. * Rot. Parl. 2 *H.* IV. *n.* 30.

This, and other Evidences of the Right of the Lords to fair Trials, having been communicated to ſeveral of them, occaſioned their Reſolution, *Jan.* 14. 1689. Vid. *Journals of the Houſe of Lords*, Jan. 1689.

"That it is the ancient Right of the Peers of *England* to be try'd only *in full Par-* "*liament*, for *Capital Offences*. Which they explained three Days after, excepting Appeals for *Murther*, or other *Felony*. Which Reſolution was 189 Years ſince the Precedent to the contrary, which had been followed ever ſince to that Day. Jan. 14. 1689.

3. It is to be conſider'd, That the Right here in queſtion, is a Right belonging to the Citizens of *London* by Preſcription, confirm'd by *Charters* and Acts of *Parliament*: And a Right, which, as has appear'd above, the preſent Repreſentatives of the Citizens, for the election of Sheriffs, were poſſeſs'd of in the Reign of *H.* VIII. if not as late as 1 *Eliz.* But if the Cuſtom ever ſince, or for a much longer time, had placed the *Exemption* and *Diſcharge* in others; ſuch a Cuſtom could not deſtroy the Cities preſcriptional Right: For tho' Interruption may deſtroy the preſcriptional Rights of particular Perſons, it ſhall not ſuch Rights of Cities and Boroughs, as may be regularly exerciſed without *confuſion*.

Of Rights of Boroughs, not loſt'd by diſcontinuance.

Vid. *The Reſolutions* ſup.

Accordingly, tho' ſome ‖ *Boroughs* never ſent *Burgeſſes* to Parliament above once, twice, or thrice, in one or two, and ſome not in three hundred Years, they, in purſuance of ſeveral Votes of the Houſe of Commons, from the 18th of *J.* I. downwards,

‖ Vid. Pryn's 4th *Regiſter of Writs*, p. 1176.

wards, have been reſtored and remitted to their Antient Right: As (*b*) *Agmondeſham*, *St. Albans*, *Alverton*, alias *Allerton*, *Andover*, (*c*) *Aſperton*, *Beverley*, *Bolton*, *Dunſter*, *Fawy*, *Gatton*, *Herewich*, *Honyton*, *Lancaſter*, *Leychesfeld*, *Lee*, (*d*) *Malton*, *Marlaw Magna*, *Okhampton*, *Oreford*, (*e*) *Pontefract*, *Preſton*, *Richmond*, *Seaford*, *Webbeley*, *Wendover*, *Wych*.

(*b*) Pr. R's 4th Reg. p. 900. 28 E. 1. 1 F. 2. 2 E. 2. none ſince till late days.

(*c*) Ib. p. 905. 26 E. 1. not before or ſince, till ut ſ pra.

(*d*) Ib p. 1055. 26 E. 1 no more.

(*e*) P. 1180. 26 E. 1. not before or ſince, till 8 J. 1.

I ſhall take leave to obſerve what is cited upon this Occaſion, in one of the Reports of the ommittee of Privileges, *An.* 1628. from *Hankford*, 11 *H.*4. "The long diſ- "continuance might come from Poverty, or the neſcience or neglect of the Sheriff. Tho for certain, in ſo long a Succeſſion of Parliaments, theſe *Burroughs* had ſufficient Opportunities of freeing themſelves from any Prejudice which might ariſe from ſuch *Neſcience*, or *Neglect*; and by ſo long a Sufferance, ſeem to have given up their Right: Yet it appears to be a Right of ſuch a Nature, as is aſſumable whenever they are in a condition to exerciſe it.

For evidence of which, I take leave to add a farther Inſtance, that no diſcontinuance, tho for ſeveral hundreds of Years, ſhall deſtroy ſuch a Right.

Which is the Caſe of St. *Edmond's Bury* in *Suffolk*.

This by *King* * *Cnute's* Charter, confirm'd by † *Edward the Confeſſor*, and afterwards by *W.* 1. and (whatever ſome talk of the publiſhing his Laws in French) according to the Uſage of his and former Times || publiſhed or proclaimed m re than once, in the *Saxon Tongue*; appears to have been a Burrough, from the Time of *K. Edmond*, who died about 800 Years ſince, and yet but one Precept can be found for this Burrough to ſend Members to Parliament till within late Days: and that ſingle Precept was as early as 30 *Edw.* 1. nor was there any Return upon it. But this appearing to have been an Antient *Burrough*; the right of being repreſented in Parliament was ſuch an *Incident*, as no *diſcontinuance* could ſever.

* Vid. Inſpex. Rot. Cart. 7. R. 2. m. 8. n. 11.

† Cart. Antiq. in Tur. Lond. Litera P. n. 7.

|| Cart. Orig. Bib. Cotton.

4. Nothing appears to the contrary, but that from the Time that this *Common-Council* receiv'd its Settlement, whenever that was, they have been choſen by the Inhabitants in the ſeveral Wards, free and unfree: tho directly contrary to the Charters, which place the Rights of the ity in the *Freemen*. And thus it continued, till the Mayoralty of that prudent Magiſtrate, Sir *Thomas Stamp*: When it was declared, "That *it is, and antiently hath been, the Right and Privilege of the Freemen of the ſaid* "*City only*, being Houſholders, paying Scot and bearing Lot, and of none other "whatſoe er, in their ſeveral and reſpective Wards, from time to time, as often as "there was or ſhould be occaſion, to nominate Aldermen, and elect Common-Coun- "cil-men, for the ſame reſpective Wards.

Of the Choice of Common-Council Men.

Vid. *Act of Com. Council, Anno* 1692. *ſ.* 2.

There is not in that Act the leaſt intimation, that there ever was a Cuſtom for the *Freemen* to chuſe, excluſive of all others: And yet the Senſe of the *Common-Council* was, that ſuch Right remained, notwithſtanding the long Diſuſe, and the uſurpation of Foreigners, with the Permiſſion of the Freemen.

2. Among Reſolutions of Judges, directly to the preſent Point, I may very well uſe that which is cited on the other Side, 40 & 41 *Eliz.*

Of Reſolutions of Judges to this Point.

According to which, it is to be preſum'd, that *Common Aſſent* has placed the Elections of Sheriffs in the *Livery-men*: but the Claim or Exercice of Authority to *diſcharge* or *exempt* a Perſon choſen, can have no Foundation in Law, unleſs transferred from the *Electors* to others, by the expreſs *Common Aſſent* of the Electors, or at leaſt ſuch as is preſumable to have been very long ſince given: for which Preſumption, I challenge any Man to ſhew the leaſt Ground.

But there is another Reſolution of Judges of yet greater Authority; that 40 and 41 *Eliz.* being extrajudicial upon a Caſe put at *Serjeants-Inn*. Whereas I ſhall ſhew a formal Judgment, that *Common Aſſent*, to be of any Force in ſuch Caſe, ought to be expreſs, and not by Implication. The Judgment follows in the ſe words:

3*d*. "It was agreed by *Coke*, Chief Juſtice, and *the whole Court*, in this Caſe of "*Colcheſter*, concerning their Corporation, that if there be a *popular Election* of the "*Mayor*, and *Aldermen*, in Corporate Towns, and this happens to *breed Confuſion* "amongſt 'em, this may be altered by *their* Agreement, and by the *common Aſſent* of "all, to have their Elections by a fewer Number; *but not otherwiſe*. But if by their "Charter they are to be elected *by them all*: then *this is not to be altered, but by and with* "*the general Aſſent of the whole Town, and ſo by this means to take away Confuſion*.

Bulſtrod, *ſ.* 71. *Corp. of* Colcheſter.

This is ſo plain, that it needs no Comment, only that it muſt not be objected, that this ſpeaks only of *Elections*, not the *diſcharging* of Perſons choſen, or any other Incident.

For if even in the Caſe of *Elections*, where there is a *Neceſſity* to reſtrain the Numbers of *Electors*, *to avoid Confuſion*; this Reſtraint will not bind without a *general Aſſent*; much leſs can it be pretended, that where Elections can be, and are, duly made, it ſhall be in the Power of others to defeat or vacate the Election; and put the

the Electors in danger of wanting ſufficient Men to ſerve, or of Confuſion by Elections often repeated: when the Power of doing this was never parted with in expreſs Terms, or ſo much as by Implication.

4. But that the *Common-Hall* have never parted with this; or if they had, are reſtored to it, may very eaſily appear, if we conſider,

1. That the Right of *chuſing* what qualified Perſons they pleaſe, or *amoving* or *diſcharging* 'em at pleaſure, is not only veſted in 'em by *common* Law, confirmed by Charters, and Acts of Parliament; but has been exerciſed by the *Common-Hall* not only before the ſuppoſed Settlement of the preſent *Common-Council*, and the *Livery Common-Hall*, but after; and that in Inſtances very remarkable, and fully expreſſive of their Authority.

And if there had been any Diſcontinuance, their adhering to their Choice of Sir *Chriſtopher Lethieulier*, and Sir *John Houblon*, and obliging them to hold, after they had fined; according to a known Term in Law, would work a *Remitter*, by which they would be reſtor'd to their beſt Right, which is ſo favour'd in Law, that if one who has been diſſeis'd of Land, enter under a Leaſe from the Diſſeiſor; he ſhall be adjudg'd to be in Poſſeſſion upon his former Right. vid. 1ſt Inſt. ſ. 347. Lit. Sect. 695.

2. That whereas the *Vindicator* will have a ſuppoſed Cuſtom for the *Mayor*, *Aldermen*, and *Common-Council*, to *diſcharge*, or *exempt*, to have been confirmed by the late Act, reſtoring the City Charter; it reſtores to the *Mayor*, *Commonalty*, and *Citizens*, all their *Rights*, [which they *lawfully* had] at the recording or giving the Judgment: But ſurely a Cuſtom of ſo late Days as this is, take it with the greateſt colour of Pretenſion, (eſpecially when the Cuſtom is of ſuch a Nature, that whatever Entries may have been in the Books of the *Common-Council*, the *Common-Hall*'s unanimous Choice of any other Perſon, may be well taken to have been the only legal *Diſcharge*; as it plainly was ſo late as 1 *Eliz.*) cannot come within the meaning of thoſe words; and that to the Prejudice of a Right which *Magna Charta*, and ſo many other Charters and Statutes; and ſome of them not very Antient, have veſted in the Electors. Stat. 2. W. & M. Seſſ. 1. C. 8.

Wherefore the *lawful Cuſtom* in this Matter, uſed by the *Common-Hall*, from the beginning, till within the Time of Queen *Elizabeth*, and of which they were poſſeſs'd at the making the Statute, 2 *W.* & *M.* is indiſputably reſtored and confirmed by that Statute.

And if all this cannot fix a Right in the *Common-Hall*, I muſt needs think the Rights of *Engliſh-men* very precarious.

Which leads me to the higher Controverſy; where the *Vindicator* ſuppoſes, that if there has been no former *By-Law* or Practice, directly in this Point; yet the *Common-Council* may exerciſe ſuch a Power, by a Right inherent in them, as the *City's Legiſlators*, who were not only prior in time to the *Livery Common-Hall*, but gave being to 'em in the Time of *E.* 4. and can controul their Acts. *The higher Controverſy rais'd by the Vindicator.* P. 1, 2, 3.

Not here to inſiſt upon the plain Conſequence of theſe Aſſertions, that if what the *Vindicator* holds be true, the *Common-Council* may not only place Elections of Sheriffs in themſelves, but of all other Officers, and even of *Members* of *Parliament*, and *Common-Council Men*; and make themſelves a Body of perpetual Continuance, ſupplying Vacancies by the Choice of the Survivers; and ſo by one ſingle Act of a *Common-Council* overthrow all the Rights of the City; to leave this Reflection to be improv'd by others.

I ſhall prove, that the preſent *Common-Hall* is by Law chiefly entruſted with executing the Powers given by *Common Law*, and Charters confirmed by divers Parliaments, to the Body of *Freemen:* Where I ſhall ſhew, *Of the Authority of the Common-Hall.*

1. That the *Rights* and Liberties of the City reſted in the whole Body of the *Freemen:* and the whole Body of them have regularly voted in making Laws, for the Benefit and Government of the City, before they had any Charters, and ſince.

2. That whoever are legally poſſeſs'd of the publick *Common-Hall*, are intituled to all the Authority which the whole Body ever had: eſpecially in thoſe Matters wherein the preſent Poſſeſſors exerciſe Authority: and that the *Livery-men* have this Right.

3. That a Repreſentation of the *Commons*, by the *Myſteries*, was ſettled in the Council-Chamber, with Authority to make By-Laws, before any *Common-Council* of the preſent Form had ſuch Authority. And, however, that the Authority of that *Council* was ſoon taken away by Act of *Common-Hall*; and lodg'd for ſome time in the Repreſentation by the *Myſteries*.

4. That whoever are intituled to the *Council-Chamber*; that Council is a meer Creature and Committee of the *Common-Hall*, by it entruſted with the diſpatch of ſome things; and for preparing others for its eaſe. And whatever Power they have about Circumſtances, cannot by their Act deprive the *Common-Hall* of any Right.

5. That there is no colour to believe, that the Common-Hall, as now compos'd, received its Being or Authority from such *Common-Council* as now acts: or from any thing but the general Consent of the *Freemen*, expres's'd in some Act of *Common-Hall*, before the Time of *E.* 4. or imply'd in the long submission of the rest of the *Freemen*, before that Time, or since.

Of the Rights and Liberties belonging to the Body of Freemen.

(1.) As I before observ'd, the *Confessor*'s Law derives the *City's Laws, Rights, Dignities*, and *Royal Customs*, from its first Foundation.

I may add, that it says, in every County there ought to be a (*a*) *Folkmote* on the first of the Kalends of *October*, there to provide who shall be *Sheriff*, and who shall be their (*b*) *Heretochs:* and there to hear their just Precepts, by the Counsel and *Assent* of the *Peers*, and [*Judgment of the Folkmote*].

(*a*) Lambert's Archionomia, f. 148.

(*b*) *That is their Earl, or other chief Commander.*

That *London* had such a *Folkmote*, and the Judgment of that *Folkmote* extended to the making *By-Laws*, before the Time of the *Confessor*, appears by the following Instance.

In the Time of King (*c*) *Athelstan*, above 120 Years before the *reputed Conquest*, Laws had been made at *Gratelie*, *Exeter*, and *Winresfeld*; or rather the Laws made at *Gratelie*, were ratified at the two other Places; all the *wise Men* not being able to meet at the first.

(*c*) *His Reign began*, Ann. 924. *ended* 940.

These Laws are not only received by the *Earls*, or rather *Companions*, and *Townsmen*, or *Citizens* of *London*; but they make considerable Additions to them for the Good of the City.

(*d*) Vid. Corpus Legum in Bibliothecâ Cottonianâ sub Effig. Claudii D. f. 14. a.

(*d*) Their Act or Judgment is called the *Constitution*, (*e*) which the *Bishops*, and *Headboroughs, who belong to the Court of* London, have made or published: and which the *Earls*, or rather *Companions*, or *Companies*, and *Townsmen*, have confirm'd by Oath in their *Free-Gild.*

There, among other things, they provide, that no Thief above 12 Years old, found guilty by *Inquisition*, or upon Trial, shall be spared. And that (*f*) he who was rob'd, having receiv'd his Capital or Principal, the King should have half; the *Society* should share the rest with the Lord, of whom he held *Book-Land, or Bishops-Land.*

(*e*) Hoc est constitutum quod Episcopi, & Prepositi qui Londinensi Curiæ pertinent, edixerunt & jurejurando confirmaverunt, in suo Fridegildo. Comices & villani in adjectione judiciorum quæ apud Grate leiam, &c.

It provides (*g*) for a Common Stock for the Good of all: and that all *in common* shall inquire into the disposal of it.

It settles (*h*) *Decennaries*, or *Tythings:* and that there shall be one over 'em, who shall summon them for their *common Profit*; and take an Account what they send, (*i*) when they are to contribute, or be taxed; and what, (*k*) when they receive Money, by Order of all the Citizens, upon their *treating together.*

With other Particulars, which I need not mention; this being enough to shew their Authority at Common Law, before the *reputed* Conquest.

(*f*) Excipiatur imprimis captale repetentis, & dividatur postea superplus, &c. (*g*) Diximus ut unusquisq; nostrum ponat unum denarium ad nostrum commodum, &c. (*h*) Et habeamus nobis omnes eam inquisitionem. (*i*) *Fraternities by Tens.* (*k*) Quando ipli gildare debebunt. (*l*) Et quid recipiant, si nobis Pecunia surgat, à nostro communi locutione.

* Vid. Leges Sancti Edw. *Declaring they shall be held weekly every Monday, and so in Charters after that time.*

Then, which was above 750 Years since, they had their *Guildhall*; and, as the * *Confessor's* Law shews, their Court of the *Hustings*; which in that Law is spoken of as an antient Court: and all things of Moment seem to have been transacted there; till the Numbers of *Freemen* so encreased, that they could not all meet in the *Hall*, but were forc'd to keep their *Folkmotes* in the open Air at St. *Paul*'s Cross; where was a very wide Field before there were Buildings to the Water-side.

† Mic. 19 E. 2. coram Rege Rot. 22.

I shall not detain the Reader with the many Presidents of their *Assemblies* there upon all emergent Occasions; but must observe, that as late as † 19 *E.* 2. they prescribed to a Right of holding Assemblies there.

I shall give but one Instance, how early the *Aldermen*, with those who called themselves the *more discreet* of the City, would have usurp'd upon the Rights of the *Commons* in their *Guildhall*, or *Folkmote* in the open Air. At the end of *H.* 3's Reign, the *Citizens*, according to Custom, had met in *Guildhall* for the Election of a *Mayor:* the *Aldermen* and *more discreet* of the City would have chosen *Philip* the Taylor; the *Commonalty* contradicted it with great Noise, and chose one *Hervey*, and placed him in the Chair. Upon this the *Aldermen* and their Party complain to the King, that they were over-run by the Commonalty. The People follow'd them with great Noise, to the Disturbance of the King, who lay upon his Death-bed; and cried, that they were the Commons, and to them belong'd the Election of a *Mayor.*

Lib. de antiquis Legibus in Archiv. Civ. f. 132. a. A. 1272

The others said, they were the *Head*, and the People but the Members: the *King's Council* put them off till next Day, and bid *Hervey* not to come to Court with more than ten in his Company: However he summoned all the *Citizens*, except those who adhered to the *Aldermen:* And next Day a vast Number of Horse and Foot came

to

to *Weſtminſter*. The *King*'s *Council* finding they could not agree, threatned to amove *Hervey*, and put a *Cuſtos* over them. To avoid which they agreed, that five ſhould be choſen of each ſide to ſettle who ſhould be *Mayor*.

However, this being in Diminution of the Right of the Commons, took no effect.

H. 3. dying, the *Archbiſhop*, the *Earl of Gloceſter*, and others of the *Nobility*, came into the City, where they cauſed *E.* 1. to be proclaimed King; and then went into *Guildhall*, where a *Common Hall* was then aſſembled; and enquiring about the Buſineſs of the *Mayor*, the *Aldermen* told them, the Matter was left to Arbitration.

The Earl of *Gloceſter* not valuing this, bids them hold a *Folkmote* the next Day at St. *Paul*'s Croſs; and he ſhould be the *Mayor* to whoſe Election the major Part of the City ſhould aſſent.

The *great Men* going into the Church with the *Aldermen*, perſwaded them to yield: upon which *Hervey* was declared *Mayor before all the People*. And thus were they in full Poſſeſſion of their Right, 1 *E.* 1.

That this People who had the Right to carry Elections and other Matters in *Guildhall*, or their *Folkmote* in the open Air, were the *Freemen*, appears by the Words of ſome of their Charters declaratory of their antient Right. Many of which are granted to the Citizens, which the Charter paſs'd in Parliament 1 *E.* 3. explains, of *Freemen* of the City; where it provides, that they ſhall not be impleaded or troubled at the *Exchequer*, or elſewhere, by Bill, except it be by thoſe things which touch the King and his Heirs. And how careful the City has been to keep Foreigners from partaking in the Privileges of *Freemen*, appears from the Act of *Common-Hall*, return'd under the *Common Seal* into Parliament, * 12 *E.* 2. and there confirmed; whereby it is provided, that if Foreigners be of any Myſtery, they ſhall not be admitted into the Liberty of the City without Sureties of ſix honeſt Men of the *Myſtery*, for their indemnifying the City: and if † they be of no *Myſtery*, they ſhall not be admitted without the *Aſſent of the Commonalty of the City*.

That the *Freemen* of the Myſteries had their ſeveral *Gilds* or *Halls*, where the Society or Fraternity met, not to mention more Authorities, appears by a Charter of || *E.* 3. reciting one of *E.* 1. which recites *H.* 2*d*'s granting to the *Weavers* of *London* their *Gild*, to hold in *London*, with all Liberties and *Cuſtoms* which they had in the time of *Henry* his *Grandfather*, which was *H.* 1. * and that no Man, unleſs by them, ſhould within the City meddle with their *Miniſtry*, unleſs he be in their *Gild*.

As therefore the *Gild* was that Company, or the *Hall* where the Men of that Myſtery met; the Common *Guildhall* was where all the Myſteries or Companies met.

(2.) That whoſoever are legally entituled to the *Common Hall* are entituled to all the Authority which the whole Body ever had, eſpecially in thoſe things wherein the preſent Poſſeſſors exerciſe any Authority; though they are not the whole Body of Men who uſed to aſſemble, as long as they are a large Part of that Body, may appear.

1. In that the *Folkmote* in the open Air, and that in *Guildhall*, were antiently taken to be of the ſame Nature. Accordingly, I find † a Writ to the *Mayor*, *Sheriffs*, and *whole Commonalty of the City*, requiring them to ſwear Allegiance in *their Huſtings*, or at *Paul*'s *Croſs*.

2. *Guildhall* has, time out of mind, been the * *Common-Hall* of the *Citizens*; and the Aſſemblies there have of all times, before || the firſt ſuppoſed Settlement of the *Livery Common-Hall*, and *ſince* †, been accounted the Aſſembly of all the *Commonalty*, as ſome Entries have it; of *all the City*, as others.

And if the whole City can regularly act together, it is abſurd to imagine, that its Acts can be controled by a ſmall part of the *Great Body*.

3. The chief Power of making By-Laws for the Benefit of a City, or Burrough, is an Incident to the having a *Gild*, or *Common-Hall*.

Accordingly in the * Reign of *H.* 2. the Archbiſhop of *York*, by the Counſel of his *Barons*, granted to the Men of *Beverlay* in *Yorkſhire* † their *Hanſe*; that *there they may treat of their Statutes* for the Honour of *God* and St. *John*, and the *Canons*, and for the *bettering the whole Town*; with the ſame kind of Liberty as they of *York* have in their *Hanſe*.

H. 2. || confirming this, grants to *the Men* of *Beverlay free Burgage*, according to the free Laws and Cuſtoms of the *Burgeſſes* of *York*, and their *Gild* of Merchants.

So that *Gild* is the ſame with *Hanſe*; and *Hanſe*, as *Bertius* * tells us, in the old *German Tongue* ſignifies *a League* or *Council*. According to this, in a Caſe which I ſhall have another Occaſion to mention, the turning out of the *Council of the Citizens* was the turning out of the *Gild*, and that was plainly a *Diſfranchiſement*.

4 Such of the *Commons* as have from time to time aſſembled in the *Common-Hall*, have, with others, been a true *Common-Council of the City*, and acted as ſuch ſince their Numbers have been reſtrained, as well as before.

It

* Rot. Par. 12 E. 2. m. 2. par. 2.

† Et ſi non ſint de certo myſterio, tunc in libertatem non admittantur ſine aſſenſu communitatis civit. illius.

|| Rot. cart. 1 E. 3. m. 33. n. 68.

Ib. Et quod nullus niſi per illos intromittat infra civit. de cor. miniſterio; niſi ſit in cor. gilda.

† In Arch. Civ. lib. de antiq. leg. de A. 1270. 54 H. 3. in Huſtingo veſtro vel ad crucem, &c.

* Rot. de 18 E. 1. *A Grant of a Meſſage* prope communem aulam in civitate Lond.

|| In Arch. civ. Lib. Dunthorn, f. 416. *The Ordinance* 20 E. 3. De aſſenſu totius communitatis in Gihaldâ

† Lib. X. f. 73. 13 Eliz. congregatio Majoris, Ald. & totius civitatis in Gihaldâ.

* Cartæ antiq. in Tur. Lond. R. n. 18.

† Suam Hanſiam, &c.

|| Ibid.

Bertius de Urbibus Germaniæ, p. 25. Fœdus & concilium priſca Germanorum voce Hanſam dicunt.

It must be observed, that the City had, or made, a *Common-Council* before any such Restraint; which is plainly intimated in *Magna Charta*, † 17 of K. *John*: which mentioning a *Common-Council* of the Kingdom (whether only for Aids belonging to Tenure of the Crown, or such a *Common-Council* as the Cities, Boroughs and Villages were at in Person or by Representation, which D. || *Brady* at last yields, need not here be determined) adds, *In like manner let it be concerning the City of* London, that is, that the Cities Aids shall be taxed in its *Common-Council*. * Sutably to this, 11 *H.* 3. a Tallage was assessed in the City, by the Will of all the *Barons* or Citizens. And thus the *Commonalty* of *London*, in the time of † *Edw.* 1. plead that the *Citizens*, and their Heirs and Successors may, *for the Necessity* or *Profit of the City*, among themselves, by *their common Assent*, assess and raise *Tallages* without troubling the King.

So || *Ipswich*, not to name other Burroughs, had its *Common-Council* of the Town, *&c.*

And 25 *H.* 3. I find the Choice of Sheriffs in *London* by the *Common Counsel* and *Assent* of the honest Men of the City.

The *Hustings* I find to be the Court of these *honest Men*; there they joined with the *Mayor* and *Aldermen* in the Grants of City-Land; were Judges at Trials, and Parties in the making By-Laws. Prosecutions for Offences against the Rights of the City were in their Name: And *Quo Warranto*'s upon supposed Abuses of their Liberties were brought against them: And therefore they not being represented by the *Common-Council*, now using that Name; those two *great Ornaments* of their Profession, the *late* and *present Chief Justices of the Common Pleas*, maintained, with the Strength inseparable from their Arguments; that no Act of the present *Common-Council* could be a Forfeiture of the City-Charter.

Indeed as the *Clerks* generally favoured the Prerogative, often exercised *by the Chair*, with the Advice of private Cabals; I find a *Mayor*, 47 *H.* 3. blamed for making the Aldermen and great Men useless, while he did nothing without the *Assent* of the *Commonalty*.

That they acted as a *Council*, and exercised a judicial Power at the *Hustings*, after that time, I might shew by numerous Instances, but shall here content my self with one, 3 *E.* 1. * which was in the Judgment against *Hervey* above-mentioned; who, though he was the Darling of the People when he was chosen Chief Magistrate, was soon overcome with the Infection of the *Chair*.

Some time after his Mayoralty, the Mayor and † Citizens having met in *Guildhall* for *trying Common Pleas*; a Dispute arose before all the People between *Hervey* and the then *Mayor*, and it seems *Hervey*'s Party there was then the strongest; for the *Mayor* found himself obliged to withdraw, and make Complaint to the *King*.

The || next Day the *Mayor* and *Citizens* returning to *Guildhall*, to *finish the Pleas depending before them*; a Roll was shewn, and read *before all the People*, containing several notorious Articles of *Hervey*'s Presumptions; one of which was, that in the time of * his *Mayoralty* he acted contrary to the *Ordinances* made by the *Aldermen* and *discreet Men* of the City. Another was, that he used the *Common Seal*, which was in his Custody, without the Assent of the Aldermen [and others:] which others, as I could shew, were to be particularly chosen by the *Common-Hall*, for that purpose. For these Offences, among others, † *against the whole Commonalty of the City*, and *contrary to his Oath*, he was *judicially degraded* from his *Aldermanship*, and || for ever incapacitated to be of the *Council of the Citizens*: which was plainly a depriving him of his former Right of voting in *Gildhall*; and indeed a *Disfranchisement*, as it turn'd him out of the *Gild*. And thus I * find Privileges in *Canterbury* granted to all the *Burgesses* of the *Gild* of Merchants.

5. The present Possession of the *Common-Hall* is or must be agreed to be a *legal Possession*: and therefore in all things which they have not parted with, the Possessors are the *legal Successors* to them who exercised Power in greater Numbers.

6. Even when those Numbers could regularly meet, they were concluded by such a Number as came upon general Notice, though the Number which met were very small; according to the Resolution, 33 *Eliz.* † in the Case of the Vestry of St. *Saviour*'s in *Southwark*.

7. || Though it may be proved that the great Barons in Parliament were antiently only those who held by *Baronies*, or were created in Parliament; yet those who have been made Peers by Patent or Writ, succeed to the same Jurisdiction; as they are possessed of the same House which the Lords formerly had.

8. A Corporation by one Name is entituled to the prescriptional Rights which that *City* or *Town* had by another Name.

And thus it was held, that though the * Town of *Colchester* was incorporated by the Name of *Bayliffs* and *Commonalty*; the *Mayor* and *Commonalty* might prescribe to the antient Customs of that Town.

† An. 1215. 17 J.

|| Vid. Dr. B's Appendix *to his compleat History.*

* Rot. Claus. 11 H. 3.

† Lib. Dunthorn in Arch. Civ. f. 89. temp. E. 1.

|| Rot. cart. 4 Joh. p. 2. m. 28. n. 188. Gipswich Burgus, Quod iidem Burgenses nostri per commune concilium villatæ suæ eligant, &c.

Lib. D. f. 46. 25 H. 3.

* In Arch. Civ. Lib. de antiquis legibus 3 E. 1.

† Venientibus Maj. & Civibus ad Gildhalliam ad coia placita placitanda

|| Pervenientibus Majore & Civibus in Gildhalliam ad placita quæ incoata fuerunt, &c.

* Tempore Majoratus sui tenetur conservare & observari facere omnes assisas factas per Aldermannos & discretiores viros civitatis, &c.

† Contra totam communitatem civitatis, &c.

|| Et à consilio civium in perpetuũ privatus

* Rot. Cart. 2 Joh. m. 16. n. 44.

† Lane's Rep. f. 21.

|| Vid. communia de term. St. Hil. 19 E. 2. Rot. penes rememb. in scio *where* Thomas de Furnival *pleads, That he was no Baron, nor held his Land by Barony, or part of a Barony; yet Father and Son had been specially summoned to a great many Parliaments from the* 3*d of* E. 1. downwards. Vid. Rot. Claus. 23 E. 1. m. 9. dorso 24 E. 1. m. 7. dorso, &c.

* Carter's *Reports*, f. 122.

Tha

That the *Livery-men* have ſuch a Right to the *Common-Hall*, appears by their long Poſſeſſion; for which, according to the Reſolutions of *Judges* before-mentioned, we are to preſume, that there had been the expreſs *Aſſent* of the Body of *Freemen*, or of ſuch of them as met upon a general Summons.

If I ſhew an Act of *Common-Hall*, as antient as the Time of *E.* 3. for the *Myſteries* to chuſe ſuch as ſhould repreſent the Commons, which I ſhall have Occaſion to ſhew under the next Head; if we find that they had been repreſented in Common-Hall, by the *Myſteries*, before that Time, and downwards to this Day; and no Act of Common-Council, or Common-Hall, will appear to have firſt ſettled the Right of Elections in the *Livery-men* of the Myſteries; then it will be evident, that tho Originally the *Myſteries* might have been repreſented by ſuch as they ſhould chuſe, from time to time; It is to be preſumed, that they agreed to be repreſented by the *Livery-men*, as a ſtanding Repreſentative.

8 *E.* 2. above 30 Years before the Pretence to any Act of *Common-Council*, or Common-Hall, which may be thought to reſtrain the *Freemen* from the exercice of the Power originally veſted in them; I find a Writ to prohibit the Multitude from meeting to chuſe a *Mayor*, and *Sheriffs*, alledging, that ſuch Elections *for Times paſt*, us'd to be made by *the more diſcreet Men of the* City, *eſpecially ſummon'd:* But then, leſt this *ſpecial Summons* ſhould ſeem at the Diſcretion of the *Mayor*, and *Aldermen*, it forbids all to meet, unleſs ſpecially *ſummon'd*, or [*at the Time bound to come*]. Rot. Clauſ. 8 *E.* 2. m. 3. Temporibus retroactis.

And a Proclamation which was publiſh'd in the City, in purſuance of that Writ, ſays, That no Man, upon pain of Impriſonment, ſhall come to any Election, but *Mayor*, *Sheriff*, *Alderman*, and other good People of the chief of the City, who by the *Myſteries*, *are eſpecially ſummon'd* to come thither; or to whom it belongs to be there. In Arch. Lib. Dunthorn. *f.* 313. a. 414 b. Etautres bones gentz de la dite Citee que per miniſtrez de meſme la Citee illoques avenir eſpecialment ſont ſomons, &c.

Theſe Repreſentatives of the Myſteries, according to what I have before obſerved of the legal Poſſeſſion of the *Common-Hall*, are to be ſuppoſed to have been the *Livery-men*, and none others: but becauſe the Partiality of the Maſters and Wardens might occaſion the not ſummoning ſome of the Livery-men; therefore there is Liberty left for them who had Right, to come, though not ſummoned.

That they and none others had this Right, will further appear when I come to prove, that no Act can be found, from whence their Right, excluſive of others, is or could be derived, or ſo much as occaſioned.

3. That a Repreſentation of the Commons by the *Myſteries* was ſettled in the Council-Chamber, with Authority to make *By-laws*, before any Common-Council of the preſent Form had any ſuch Authority; And however, that the very Being of a Council of the preſent Form was ſoon taken away by Act of Common-Hall; and a Repreſentation by the Myſteries ſettled in their Places with greater Authority, will appear very evidently. *A Repreſentation by Myſteries firſt ſettled in the Council-Chamber with Authority to make By-laws.*

I muſt agree, that 20 *E.* 3. it was ordered by the Common-Hall, "That every *Alder-*
"*man*, at the holding of his *Wardmote* yearly, ſhould cauſe 8, 6 or 4 of the ableſt
"and wiſeſt of his *Ward* to be choſen, *to treat of the Affairs concerning the Commonalty*
"*of the City.* Vid. *A Paper entituled*, The Right of the Citizens to elect Sheriffs, *&c. citing the Books in* Guildhall, 20 *E.* 3.

But upon this it is obſervable.

1. That though according to the Lord *Coke* the *Wardmote* is of the Nature of an Hundred Court; that is, in relation to the Diſtricts or Diviſions of the City, and chiefly as to the Returns of Juries; but in Relation to the preſent Debate, it is more fully of the Nature of a *Court Leet*, where all *Reſiants* are obliged to attend, and upon the Account of Reſiancy are to bear Offices; and contribute in ſeveral things together with the Citizens, who in this Reſpect are as the *Barons* or Free-Tenents of a *Manor*. *This, according to the Reference which I have to that time, is* Lib. Dunthorn, *f.* 416. b. 417. a.

Wherefore this Order does not reſtrain Foreigners from being *Electors*, or elected.

2. This is not ſaid to be appointed for the Common-Council of the City; but in truth the Common-Hall, as they were before, then continued the only Common-Council.

Nor, taking the Original Entry of that Order to import more than [Affairs], does the treating of [the Affairs] concerning the Commonalty, in this Place imply more than ſuch Affairs as concern them, according to their Diviſions by *Wards*, in the Choice of Conſtables, or the like; or the aſſeſſing of Aids and Tallages: for which Purpoſe I find certain Numbers in every *Ward*, appointed very antiently, before there is the leaſt Pretence of the Settlement of any other Common-Council beſides the Common-Hall.

But it is far from appearing, that the Men of the *Wards* appointed to treat of Affairs, 20 *E.* 3. were to treat of ſuch as concerned the Commonalty, as divided or acting by *Myſteries:* Or, however, if the treating of Affairs extends to all the Affairs of the City; it can here imply no more than treating of them by way of Advice, to that ſupreme Power in the City which made them what they were, and diveſted it ſelf of

no Authority: nor indeed could any form of Words have paſſed away the Authority of that, much leſs of ſucceeding *Common-Halls*.

And it is certain, that antiently whatever Power the *Common-Hall* placed elſewhere, they never thought it abridg'd their own Power: of which I ſhall give a conſiderable Inſtance.

In Arch. civ. lib. C. f. 6. a. 21 E. 1.

21 *E.* 1. The Commonalty of the City in their ſeveral *Wards* choſe their *Aldermen* freely and with full Conſent; and preſented them to the *Cuſtos* then over them, in this form.

" That all and ſingular the Things which the ſaid *Aldermen* of their *Counſel* and " *Diſcretion*, with the *Cuſtos*, and *Superiour* for the time being, ſhould make and *ordain* to " be firmly obſerved; for the Government of the City, and for keeping the King's " Peace; and for [other Proviſions touching the *Commonalty of the City*,] they will " *hold ratified and firm, without Challenge or Reclaim for the future* to be made. And " alſo every *Ward* choſe its *Alderman*, for whom as to his Deeds touching the City " and Commonalty, and State of the ſame, they will anſwer.

Notwithſtanding the Power ſo amply conferr'd upon thoſe *Aldermen*, they did not pretend to uſe the *common Seal* without the expreſs Conſent of thoſe who ſet them up, and could then pull them down at pleaſure, at leaſt at the Year's end. That very day after the Commons had preſented their *Aldermen* in *Common-Hall*, a Grant of City-Land paſs'd with the *common Aſſent*, and *Conſent* of all then preſent. Ibid.

And that the *Common-Hall* thought themſelves in full Poſſeſſion of their Power, notwithſtanding the *Ordinance* they had made 20 *E.* 3. for ſome to *Treat* about their Affairs; appears in that they being found uſeleſs, or too aſſuming; the *Mayor*, *Aldermen* and *Commons*, who ſeem to have turn'd them off * before; within 23 or 24 Years after they had received them into their Service, and 28 or 29 Years after the *City*'s Power of making *By-Laws* was firſt expreſly affirmed by Charter; referring † to that Grant, by *common Aſſent*, agree upon a method for putting it in Execution: but till then ſeem never to have exerciſed that Power otherwiſe than in *Common-Hall*: Then the *Mayor* and *Aldermen* [*by the Aſſent of all the Commons*] *Ordain, and firmly eſtabliſh for ever*, as the moſt convenient manner they could find, to debate of the Miſchiefs which had at that time been complained of; and to eſchew all Suſpitions, and *outragious Tumults*, which often happen'd to *great Aſſemblies*; that every Year againſt the day that the new *Mayor* ſhall be ſworn, the *Surveyors* of every *ſufficient Myſtery* of the City ſhall aſſemble the *Myſteries* each by it ſelf, where they ſhall pleaſe; and * *they ſhall chuſe certain Perſons in whom the Myſteries ſhall hold themſelves content*, with whatever ſhall by the *Mayor*, the *Aldermen*, and *theſe choſen*, be *aſſented* and *ordained in the Guild-Hall*; and that *theſe choſen* and *none others*, be ſummon'd to the Election of *Mayor*, and *Sheriffs*; and alſo at all times that any matter ſhall be touched at *Guild-Hall*, *for which they ought to aſſemble and take Counſel of the Commons.*

*43 or 44 E. 2.

† In Arch. civ. Lond. lib. Legum, à 15. E. 3.

* Et iſtirent, certain Perſons en qui eux ils ſe tendront content. &c.

Hence it appears;

1. That this Proviſion agrees with what was 8 *E.* 2. affirm'd to have been the Cuſtom then: ſo that this was but in Affirmance of the Cuſtom.

2. That the *Commons* in Perſon, or by Repreſentation, made a *Council*; or *Counſel* was to be taken of them; which comes to the ſame thing.

3. That whatever Repreſentation may have been at ſome times, by certain Numbers out of the *Wards*, or any other way; the ſettled Repreſentation was by the *Myſteries* or *Companies*: and this amounted to a Repeal of all former Acts which might have placed this in others.

4. That they who were entituled to the *Common-Hall* for Elections, were to the *Council-Chamber* for making *By-Laws*.

In Arch. civ. L. lib. H. f. 45. 50 E. 3. Ward *Mayor.*

Thus it continued 50 *E.* 3. when the *Commons* having by their *Common Sergeant* complain'd, that the *Mayors* us'd to call together ſuch *mean People* as depended upon them, and to pretend that what was done at ſuch Meetings was *with the Aſſent of the Commons*: the *Mayor*, by Advice of ſeveral principal Citizens, ſummon'd the *Myſteries*, according to the Order of 43 or 44 *E.* 3. They meeting in great Numbers, the like Order as the former, and with the like Recital, was made by the *Mayor* and *Aldermen*, with the *Aſſent of all the Commonalty.*

Indeed, they particularly provide, that at their Aſſemblies to treat and conſult of the *common Buſineſs* of the City, no Action ſhall be try'd before them, if it does not touch at leaſt an entire *Ward*, or a whole *Myſtery*.

And they reſtrain the *Myſteries* to a certain number of Repreſentatives, providing that the *greater Myſteries* ſhall not ſend more than *ſix*, the leſs than *four*, and the leaſt but *two*: But this was looked upon as too great a Reſtraint of *Common-Right*; and therefore was never followed.

A * *Council* being holden in the City 9 *R.* 2. about the Caſe of one *John* of *Northampton*, there met 13 of the *Ward* of *Cordwayner-ſtreet*.

* In Arch. civ. L. lib. H. *f.* 198. b.

And I find it upon † Record, to have been one of the Articles in an Appeal brought againſt him, that againſt the meeting of every *Common-Council* in his Mayoralty, he cauſed a Man or two that for that Year was choſen to be in the *Common-Council* of the Crafts which held with him, to meet at a Tavern to prepare Matters for their carrying his Deſigns with one Voice at the *Common-Council*. And that in an Aſſembly at Goldſmiths Hall he cauſed Perſons of *divers Crafts* more than were enter'd for the *Common-Council*, to be ‖ called at the day of Election *into the Common-Council*, to help his Election. Which not only ſhews that the *Common-Council* at that time was, as it is elſewhere call'd in thoſe Articles, the *Common-Council* of *Crafts*; but that they who made the Elections in *Common-Hall* made *Ordinances* in the *Council-Chamber* (tho as it will appear they were to be ratified in *Common-Hall*, or elſe had no force:) And that they were not confin'd to a certain number according to the Ordinance 50 *E* 3. or that 7 *R.* 2. which I ſhall ſoon conſider. And argues ſtrongly that thoſe who were then brought upon the *Livery*, tho not before return'd, were held to have Right to be at the Elections, and *Common-Councils*.

† Rot. in Tur. Lond. 8 *R.* 2.

‖ *Cleped.*

And it appears by moſt Entries concerning Elections from thoſe times downwards to the preſent time; that tho Orders have been made to keep ſome Elections within the *Council-Chamber*; thoſe Orders have been look'd on as abſolutely void, and the Elections have been made by great multitudes, or the immenſe *Community*, as often ſtiled: nor has the *Common-Council* aſſembled in the *Council-Chamber* kept within the number appointed by former Ordinances.

But it is obſervable, that in *H. 6th*'s time the *Common-Council* is called *Commune Concilium Miniſtratorum*, that is, of thoſe who exerciſed the Miniſteries or Myſteries, as a Trade is call'd in *H. 2d*'s Charter to the Weavers Company.

Journ. Foſter, f. 186. a. 210. b. 218. b. 32, & 33 H. 6.

And it will appear by the *By-Laws* 7 and 15 *E.* 4. that the *Common-Council* then conſiſted of the Myſteries; that is, as the Ordinance 15 *E.* 4. explains it, the Livery-Men of the *Myſteries*.

Vid. Inf.

And 6 *H.* 7. I find the *Common-Council* called the *Common-Council* of the *Wardens*, and other honeſt Men of all the *Myſteries*.

Lib. L. f. [illegible] 6 H. [illegible] Mai Alo[illegible] mum. [illegible] Garolandi [illegible] & al. procurum nomin[illegible] omnium Myſteriarum.

According to which Inſtances it ſeems the *Council* appointed 7 *R.* 2. was very ſhort-liv'd: and the preſent *Common-Council* muſt date it ſelf from after the 6*th H.* 7.

The Common-Council a Creature of the Common-Hall.

4. But whoſoever are entituled to the *Council-Chamber*; that the *Council* there is a meer Creature of the *Common-Hall*, and in the nature of a *Committee* entruſted with the diſpatch of ſome things, and the preparing others in Eaſe of the *Common-Hall*; and that they cannot deprive the *Common-Hall* of any Right; may appear beyond Contradiction, if we conſider,

1. The only Foundation upon which the preſent *Common-Council* now ſtands.

2. The nature of the Power of making *By-Laws*; and ſome particular Evidences that that Power is ſubject to the Controll of the *Common-Hall*.

The Foundation of the preſent Common-Council.

(1.) Some have ſuppoſed the preſent *Common-Council* to have had its Eſtabliſhment and Settlement 20 *E.* 3. the contrary of which has appeared. But the true Foundation of ſuch a ſort of Eſtabliſhment as it has, was the Act of *Common-Hall*, 7 *R.* 2. in the infamous Mayoralty of *Brember*, when *John* of *Northampton* before mentioned was ruined, for ſtanding up for the Rights of the *City*; in which he was * afterwards juſtified by Act of *Parliament*. Whereupon all the *Ordinances* made againſt him in the City were repealed by † the then *Common-Council*.

* In Arch. civ. lib. H. *f.* 262. b. 15 R. 2.

† Ib. *f.* 300. a. 18 R. 2.

The Act which gives ſome ſort of Settlement to this *Common-Council* is as follows.

In Arch. civ. lib. H. *f.* 173, & 197.

" On Friday next before the Feaſt of the Purification of the bleſſed *Virgin Mary*, " in the 7*th* Year of the Reign of King *Richard* II. in the Preſence of the *Mayor*, " *Aldermen*, and the *immenſe Community* ‖ of the *honeſt* and *diſcreet* Men of the ſaid " City, *in Guildhall*, *for diverſe Affairs touching the ſaid City aſſembled*; the under- " written * *Petitions* by the *honeſt Men* of the City before, by the *Mayor*, *Aldermen*, " and *Commonalty*, *choſen* and *aſſign'd* † *to ordain* with mature Deliberation, how " Judgments in times paſt in the *Common-Council* of the ſaid City given and made " were made by Noiſe more than by Reaſon, and ſometimes by Men leſs ſufficient " deputed to the ſaid *Common-Council*: for the taking which away, the ſaid *honeſt* " *Men*, in the *ſaid Aſſembly*, with full Deliberation *ordained* the ſaid underwritten " *Ordinances*, and caus'd them to be read in form following,

‖ Immenſæ communitatis, proborum, &c.

* Vot. *Petitions.*

† *This ſeems not very good ſenſe: but the Original is* Ad ordinandum cum maturâ deliberatione quomodo judicia tempore præterito in Communi Concilio reddita & facta, &c. fiebant.

" ‖ For as much as by Complaint of many *honeſt Men* of the Town, made to the " *Mayor* that now is, how divers times in the *Counſeils* uſed within the *Hall* and *Cham-* " *bers of the Guyhalde*, great Rumour and Peril had been perceived, as well by *great* " *Aſſemblies*, as often by *inſufficient* Perſons deputed to the *ſaid Counſeils*; ſeeing that " oftentimes the Judgments of the ſaid *Counſeils* were more by Clamour than by " Reaſon,

‖ Par cauſe que, &c.

" Reaſon, to the great Diſturbance of the Peace, and Quiet between the People for " times paſs'd, and more likely to be in time to come, if Remedy be not provided.

" Whereupon, the *Mayor*, with the *Aldermen*, and *the good Commons*, choſe certain Note, *They chooſen only to adviſe the Mayor, Aldermen, and Commons.* " Perſons thereupon by Deliberation to *adviſe* them, how ſuch Rumour and Peril might " be eſchewed and remedied: Which Perſons being divers days aſſembled upon the Mat- " ter aforeſaid, have [by *their Advice*] ordain'd, for remedying ſuch Perils, the Arti- " cles after-written. *If this pleaſe* the *Mayor*, and the *other good Men* of the Town, *to try* " *for a time*, to ſuch intent, that *if Good and Peace be found* in ſuch Counſels by the Ordi- Note, *A probationary Order.* " nances after-written, in the Name of God let them be *confirmed*; and if the contrary, " as God forbid, that this may in time *be amended*, for the *common Good* of all the Town.

" For the continuing a *Common-Council* of the Town by ſufficient Perſons, as well of Sub- Note, *The Aldermen uſed to be choſen annually.* " ſtance as Senſe, let it be *Ordained*; " That every Year on the Day of St. *Gregory*, when " the *Aldermen* are eſtabliſhed for the Year enſuing, let them be firmly charged 15 Days " after the ſaid Day, to go to aſſemble their *Wards*; and by good Deliberation, charge " them to chuſe Four of the moſt ſufficient Perſons that are in their *Ward*, without re- " gard to the State which they bore before, to be of the *Common-Council* the Year enſu- Vid. *The reſt in the Right of the Common-Hall*, &c. " ing: And the Names of the ſaid Four to preſent to the *Mayor* for the time being; " which Perſons ſhall be accepted by the *Mayor*, and commanded to take their Oath as " is comprized in Writing heretofore made. *Provided* always, that the *Mayor* for the " time being ſhall not receive throughout the Town, of any *Myſtery*, for the *Common-* " *Council* more than Eight Perſons of a *Myſtery*: Altho it happen that more than Eight " of one *Myſtery* be preſented and choſen, *&c.*

Which Ordinance was approved, and confirmed to endure for ever.

Here it is obſervable,

1. That at the time of this *Common-Hall*, there was no ſtanding *Common-Council* other than the *Common Hall*, all others being diſcontinued; and that before that time, the *Common-Council* filled both the Hall and Chambers belonging to it: And Matters were carried as the noiſe was communicated, from one place to the other.

2. That the Perſons who are ſaid to have made the *Ordinance* were only a *Committee*, appointed and choſen by the *Mayor*, *Aldermen*, and *Commons*, for that ſingle Purpoſe, and for that Time only.

3. They ſuppos'd Themſelves, and all Common-Councils for the future, according to the Proviſion then made, to have no farther Power, than to prepare Matters for the Common-Hall, and propound them for their *Fiat*.

4. They do not propound the Conſtitution of that *Common-Council* as an abſolute Form; but that it may continue as long as it *proves convenient*, and that it may be try'd for a time.

5. Therefore the Eſtabliſhment, according to the very Words, as well as the Nature of the thing, is of no farther force than as a probationary Order; to be obſerved only till the Common-Hall ſhould think fit to ſet it aſide.

6. As they who propound this Ordinance, in relation to that Body of which they were part, were Inferiours, and therefore *Petitioners*, to the Body aſſembled in *Common-Hall*; they ſet a good Example to all future *Common-Councils*.

But that the *Common-Hall* has not thought it ſelf bound always ſince that Act of Common-Hall, which ratified the Ordinance above, to keep to that Form of *Common-Council* there appointed, we may gather from the Entries, which argue *Repreſentations* at *Councils* after that, by the *Myſteries*. 'Tis certain, the Number of *Common-Council-men* appointed 7 *R.* 2. was never kept to; no not the very next Year: For then, as has before appeared in the Caſe of *John* of *Northampton*, the *Repreſentation* was by the *Myſteries*, and ſent from the ſeveral Halls. And in the Year after that, there were in the *Council-Chamber*, 13 of *Cordwayner*-Street; that is, as I ſhould think, *Cordwayner*'s Myſtery. And it is certain, Companies uſed antiently to keep together within the ſame Streets, or Diſtricts. And ſome Wards to this very day retain the Names of the Companies, or *Guilds*, which liv'd there; as the laſt above-named, *Candlewick*-Ward and the *Vintry*. And *Cornhil*-Ward, as I take it, was from the *Gild* ſettled there. Nor can I omit the Obſervation, that in ſome (*a*) Records I find *Ward* and *Gild*, or *Company*, ſynonymous.

Rot. Pat. 21 *H.* 6 *p.* 1. M. 25. *To ſeveral Pariſhioners there.*

(*a*) Vid. Rot. Pat. 12 *E.* 2. m. 5. n. 4. pro mercatoribus de ſocietate Gardarum de Florentiâ.

Of the Nature of By-Laws, and the Common-Council's Pretence to make 'em.

2. Having trac'd this *Common-Council* to its weak and infant State, we may conſider it as poſſeſſed of a Power of making *By-Laws*: But then we muſt obſerve, that this will bear no Compariſon to the Poſſeſſion which the *Livery-men* have of the *Common-Hall*, which has been excluſive of all others. Whereas all the Poſſeſſion which the preſent *Common-Council* have had of the *Council-Chamber*, has been only as a Committee entruſted by a greater Court, having Continuance, and acting with Supream Authority.

Beſides,

Beſides, it has been reſolved by the *Judges*, " That a By-Law to make a *Monopoly*, " and a Preſcription of ſuch a Nature, to induce a ſole Trade or Traffick to a Com- " pany or Perſon, and to exclude all others, is againſt Law. Moor's *Rep.* ſ. 576, & 591.

Which is eaſily applicable to the *Common-Council*'s engroſſing the Power of the *Common-Hall*.

It would be endleſs to heap Authorities which might be brought to evince, that the *Common-Council* has no colour of Pretence to *make By-Laws*, of ſuch a Nature as they now inſiſt upon.

But I cannot paſs by the Reſolution in the Caſe of the *Chamberlain* of *London*, in an Action brought by him for a Penalty raiſed by a *By-Law*. 5 *Rep.* ſ. 63.

" All ſuch Ordinances, Conſtitutions, or *By-Laws*, are allowed by the Law, as are " made for the true and due Execution of the Laws or Statutes of the Realm; or for " the *good Government* and Order of the Body-corporate: And all others which are con- " trary, or repugnant to the Laws or Statutes of the Realm, are void and of no effect.

To apply this to the Caſe in Queſtion; for the *Common-Council* to vacate an Election made in *Common-Hall*, or to *exempt* any Perſon from being choſen, is not *for the good Government and Order of the Body-corporate*; and beſides, is directly *contrary or repugnant* to the Laws and Statutes of the Realm, which have fixed the Election of any ſufficient Citizen in the *Livery Common-Hall*; and have provided it with Authority to oblige them to hold: And therefore any *By-Law* made in the *Common-Council* contrary to this Right, is void.

Nay, and thus they themſelves have judg'd but lately in the like Caſe.

In the Mayoralty of Sir *John Fleet*, he acquainted the Common-Council, that 40 or 50 foreign Merchants would pay 400 *l.* a-piece to the uſe of the Orphans, if they might be admitted to the Freedom of the City, and have an Act of Common-Council to *exempt* 'em from bearing chargeable Offices. *Anno* 1693.

After ſeveral long Debates, this Project, though of apparent Advantage to the City, was laid aſide; the Common-Council declaring it was not in their Power, to reſtrain the Right of the Common-Hall to chuſe any *ſufficient Citizen*.

The Opinion of the Learned Judg *Bracton*, is very applicable to this Matter; where ſpeaking of the Engliſh Laws, he ſays;

" Which ſince they were approved by the *Conſent* of thoſe who uſe them, and con- " firmed by the Oaths of Kings, cannot be changed or deſtroyed, without the *common* " *Conſent, and Counſel*, of thoſe by whoſe *Counſel, and Conſent*, they were promulged. " But they may be changed for the better; becauſe that is not deſtroyed which is made " better. Bracton, *lib.* 1. *c.* 2. Temp. *H.* 3.

With ſuch a Limitation we may allow the Common-Council to act for the Eaſe of the Common Hall, in relation to Times, Places, and other Circumſtances; for the better Execution of the Laws and Cuſtoms of the City.

But that the Power of making *By-Laws*, exerciſed by the Common-Council, is controlable by the Common-Hall, will, beſides what I have already obſerved, appear by the Charter 15 *E.* 3. which is the only Charter expreſly affirming the City's Power of making *By Laws*. Vid. *By Inſpect.* Rot. Cart. 1 R. 2. M. 31. n. 22.

" Moreover, we have granted, that if any Cuſtoms in the City of *London*, [*newly ari-* " *ſing*] where a Remedy was not before ordain'd [*want Amendment*] the ſaid *Mayor* " and *Aldermen*, and their Heirs and Succeſſors [*with the Aſſent of the Commonalty* of the " ſame City] remedy convenient, conſonant to good Faith and Manners, for the *com-* " *mon Utility* of the Citizens of the ſaid City, and other our Liege People flocking to the " ſame, may apply and *ordain*, as often, and when it ſhall ſeem expedient to 'em. *Provided* " nevertheleſs, That ſuch kind of Ordinance be of Utility to us, and our People, and con- " ſonant to good Faith, and Reaſon as aboveſaid.

According to this Charter,

1. The Power of making *By-Laws* relates to Amendments for the *common* Utility of the Citizens.

2. Thoſe Amendments cannot ſap, or weaken any antient Conſtitution or Cuſtom.

3. They are to be made with the *Aſſent* of the Commonalty of the City.

Neither of which can be pretended in the Matter in queſtion: And ſince, as is ſaid in the Chamberlain's Caſe, " Corporations cannot make Ordinances or Conſtitutions with- " out Cuſtom or the King's Charter, unleſs for things which concern the Publick Good, " as Reparations of Churches, or High-ways, and the like; but the Power now claimed, is neither of that Kind, nor is there Legal Cuſtom or Conſent or Charter for it: I need raiſe no Conſequence upon it. 5 *Rep. ſup.*

To conclude this Point; if this Common-Hall legally ſucceeds the Common-Hall which appointed this Committee; and the Committee may be ſet aſide at the Pleaſure of the Common-Hall; if ſince the raiſing this Committee, and that of late days, the

Mayor, *Aldermen*, and *Common-Council*, have acted together as one Court: If farther, as in the Case of *Rowlet*, before-mentioned; they have acted with a Superior Authority in those very things, wherein the *Mayor*, *Aldermen*, and *Common-Council*, have exercised Authority by themselves; if most of these Premises hold, especially if all do; there can be no Question but *By-Laws*, and other Acts of the Common-Council, are controlable by the Common-Hall: and then it would be very strange to imagine that it should be in the Power of the Common-Council to take away, or abridg, any Right of its Superior, from whence it came, and in which it is contain'd.

I shall not so much question the Judgment or Memory of my Readers, as to repeat the Proofs of every one of these Premises.

But I would desire 'em to remember the Instances of *Disfranchisements* by *Common-Hall*, before any standing Rule for 'em. This Power, I must confess, the *Common-Council* have pretended to; and as if they not only had it, but had it without delegation, have fansied they could delegate it to others.

Journal Cotes, *f.* 103. 36 *H.* 8. Accordingly I find an Act of *Common-Council*, impow'ring the *Mayor* and *Aldermen* to *Disfranchise*, upon competent Proof by Oath, before them, of any Citizen's Trespass, Act, Disobedience, or Offence, against the City, and the Liberties, Franchises, and free Customs and Privileges of the same.

Which would be a very dangerous Weapon in the Hands of *Aldermen*, who by Act of *Parliament* obtain'd by Surprize, and contrary to the Sense of the City, declared more than once, and ratified by former *Parliaments*, have their Stations, in effect, for their Lives.

Baggs's *Case*, 11. *Rep. f.* 99. But as it appears by the Resolution in *Baggs*'s Case, the above-mention'd Act of *Common-Council* is void in *Law*; no such Power having been derived to them by the *express words* of any *Charter*, or *Prescription*.

Yet this Power the *Common-Hall* undoubtedly has, and, I may say, incommunicably, till that part of their Court, or the Committee from them, which sits in the Council-Chamber, shall have legally possess'd themselves of the *Hall*.

I shall add but one Precedent, of many, where the *Mayor*, *Aldermen*, *Common-Council*, and *Commons*, acted together as one *Court*, and true *Common-Council* of the City; and that since the time that the present *Common-Council*, and *Livery Common-Hall*, are suppos'd to have been setled.

* In Arch. Civ. *Journal Haddon*, *f.* 24. *a.* and *b.* Aylmer *Mayor*, 23 H. 7. ‖ Commune consilium ac immensa multitudo communario um in penultimâ liberaturâ. Note, *This is not according to the Ordinance*, 15 E. 4. A *Mayor* * dying in his Mayoralty, the *Locum tenens*, or Senior *Alderman*, with the rest of the *Aldermen*, appoint a Day for the choice of a new *Mayor*; and order the Servants of the *Chamber* to summon the *immense Community of the City*.

There met the ‖ *Common-Council*, and the *immense Multitude* of *Commoners*, in their last Livery but one.

Aylmer was there chosen *Mayor*, and sworn before the *Aldermen*, and *Commons*.

In that *Common-Hall* they, after the Election was over, acted together as a Council: For whereas the *Mayor* should, as it seems, according to the usual course in such Cases, have been sworn to the *King* the next Day; The Aldermen, and Commons, *for certain Reasons moving them thereto*, appointed a farther Day.

That the Commons who did this were the *Livery-men*, appears by what immediately follows in the same Entry: Where it is said, That the Aldermen conducted the new *Mayor* to the taking his Oath, in their Violet-colour'd Gowns, and the Common in their last Livery.

Communiarii in ultimâ liberaturâ. *That the present* Common-Hall *did not receive its Being, or Authority, from such a* Common-Council *as now acts*, &c. 5. That there is no colour to believe, That the *Common-Hall*, as now compos'd, receiv'd its Being, or Authority, from such a Common-Council as now acts, or from any thing but the general Consent of the Free-men, express'd in some Act of *Common-Hall* before the time of *E.* IV. or implied in the long submission of the rest of the Free-men, before that time, may sufficiently appear by what has been prov'd under former Heads: And yet if any Act or Acts of Common-Council, in the Reign of *E.* IV. were the occasion of Elections having been restrain'd to the *Livery-men*, it may appear by what has been formerly shewn, That the submission of the Free-men, implied in the Custom ever since that time, gave the only force to that Restriction; that of it self carrying no manner of Authority to diminish the Right of the *Common-Hall*.

But any one, who remembers the Evidence that the Mysteries had Representatives of their own, before the time of *E.* IV. and the Legal Presumption, that those *Representatives* were the *Livery-men*, will be more fully satisfied, that they were so before the time of *E.* IV. when he observes the words of those Orders, which are pretended to have given Being to the *Livery Common-Hall*.

The first Order is thus:

Vindic. p. 2. Li. l. Young *Mayor*. "At a Common-Council holden on *Wednesday*, in the 7th Year of the Reign of "King *Edward* the Fourth, it was agreed by *John Young* Mayor, *John Norman*, &c. Al-

"dermen,

" dermen, and the Commonalty of the City of *London, (inter alia)* That the Election " of the Mayor and Sheriffs, ſhall hereafter be made [only by the Common-Council:] " The Maſter and Wardens of every *Myſtery* of the ſaid *City* coming in their *Live-* " *ries*; and by other honeſt Men for that purpoſe *ſpecially ſummoned.*

1. It muſt be remember'd, That the Common-Council in *Hen.* the Sixth's time, was the Council of the *Myſteries*; and conſequently, unleſs an alteration can be ſhewn, muſt be thought to have continued ſo at the time of that Order, 7 *E.* IV.

2. This Repreſentation of the Commons being ſo large as has appear'd above, their Act is call'd, *The Act of the Commonalty of the City:* And this we muſt ſuppoſe to have been made in *Common-Hall.*

3. None beſides the Maſters and Wardens are by this Act oblig'd to come in *Liveries.*

4. Here is no reſtriction of Elections to the *Liveries*; but to the Common-Council: That is, as is there explained, the Maſters, and Wardens, and other honeſt Men of the *Myſteries*, ſpecially ſummoned.

To which *ſpecial Summons*, as has been ſhewn before, the *Livery-men*, and no others, were entituled.

Wherefore, this was no more than a repeating, or affirming, former Orders, often occaſioned upon the breaking in of other Free-men, to the diſturbance of Elections, before plac'd in the more *diſcreet*, which the Cuſtom has interpreted to be the *Livery-men*: Who, according to this Ordinance with which the preſent Common-Council triumph, were the only Common-Council at that time.

And thus, as appears by the Entry before-cited, 6 *Hen.* VII. they continued after this Ordinance, and after the next, 15 *E.* IV. which has theſe words.

" Then in the ſame Common-Council it is agreed, That the Maſter and Wardens " of the *Myſteries* of the *City*, in their Halls, or other Places of the *City*, fit and con- *Vindic.* p. 3. " venient; aſſociating to them *the honeſt Men of their Myſteries*, being clothed in their Lib. L. f. 113. " *laſt Livery*, ſhall go together to the *Guild-Hall* of their City, for the Election of " *Mayor*, &c. And in their *laſt Livery but one*, to the Election of the *Sheriffs* of the " City, *&c.* And that no others, beſides the *honeſt Men* of the Common-Council of " the City, ſhall be preſent at the ſaid Elections.

All that this adds to the former Proviſion, 7 *E.* IV. is only the requiring all the *Livery-men*, for diſtinction's ſake, to go in their *Liveries*, to prevent the interpoſition of others. Which was no reſtraint upon Perſons; but a requiring the Perſons who came according to their former Right, to wear their proper Habit, to diſtinguiſh 'em from others. Some may ſuppoſe, that this ſpeaks of *honeſt Men* of the Common-Council, beſides the *honeſt Men* of the *Myſteries:* Whereas the Common-Council is plainly here mentioned as exegetical, or explanatory, of the *honeſt Men* of the *Myſteries:* That is to ſay, ſuch *honeſt Men* of the *Myſteries* as are of the *Common-Council*, and no others, ſhall be preſent at the Elections: Which, as has appear'd, were, long before that Ordinance, the *Livery-men* only. If this and the other be not taken in this Senſe, then they neither confine the Election to *Livery-men*; nor ſuppoſe the *Livery-men* only, to have right tocome; but allow any *Commoner*, who is choſen to the *Common Council*, to Vote at the Elections, tho' no *Livery-man:* Whereas they who would derive the Authority of the *Common-Hall* from theſe Ordinances, ſuppoſe, that they reſtrain Elections to the *Livery-men* only.

But, could it be imagin'd, that thoſe Ordinances, or either of them is, or are conceiv'd in terms importing a reſtriction of Elections to the *Livery-men*; and that the Ordinances were made by a *Common-Council* choſen by the *Wards*, it appears by the Ordinance which laid the moveable Foundation, upon which following *Common-Councils* of the *Wards* have built up themſelves; beſides, other Evidences of the Superior Authority continuing in the *Common-Hall*, (the true *Common-Council* of the *Myſteries* or *Crafts*, as it is called 8 *R.* II.) That the force of ſuch reſtraint could not proceed from the Authority of the *Common-Council*; but that ſubſequent *Common-Halls* not having thought fit to alter this; and the generality of the *Free-men* having reſted contented with their *Livery-men*; Such *Sufferance* and *Conſent* has made that become a legal Settlement, which at firſt could be no more than Matter of Advice.

And, according to this, I find Writs from the Crown, and Acts of Common-Council, place the legality of ſuch Reſtrictions in the Cuſtom of the *City*. But I muſt ſubmit to Conſideration, whether there is not better ground to believe, That the *Livery-men* were the *ſtanding Repreſentatives* of the reſt of the *Free-men*, before ever ſuch a *Council* as now acts had any ſetled Being; or, at leaſt, before the time of *E.* IV. than there is to think, that the Words of either of the Ordinances of his time, ſo much as recommend any other deſignation of *Electors*, than what Cuſtom, and conſequently the Conſent of the Free-men, had ſetled before.

In

In ſhort, it has appear'd, That the Reſolution of the Judges, cited on the other ſide, and more particularly, another upon the like Occaſion us'd by me, are ſtrong for the *Common-Hall*.

That according to that very Act of *Common-Council*, 7 *Car.* I. on which the *Vindicator* relies, no Man choſen Sheriff is diſchargeable, unleſs for want of ſufficiency in Eſtate: Nor is there any ground for other *Exemption*: And whatever *Diſcharge* or *Exemption* may have been given by any beſides the *Common Hall*, the Party is nevertheleſs *elegible*, as if he had never been *diſcharged*, or *exempted*.

This is made yet more evident, by comparing the Act of *Common-Council*, 7 *Car.* I. with former Acts: But chiefly, with the Act of *Common-Hall*, 24 *E.* III. which was reinforc'd, 18 *Hen.* VIII. and to this very Day ſtands in full Virtue, declaring the Senſe of the Body of *Free-men*, That for the *Common-Council* to *vacate* or *defeat* their *Elections*, is to the Prejudice of particular Perſons, who are oblig'd to ſerve, through Default of others; and of the whole City in general, who may want *ſufficient Perſons* to ſerve: Or, at leaſt, cannot find Men of the like Qualifications in every reſpect, with thoſe whom they firſt choſe.

If we look into the Cuſtom, it is manifeſt, That the Authority of the *Common-Hall*, and of none beſides, to *Diſcharge*, or *Exempt*, has been fully exerted; and own'd, not only by *Common-Councils*, but by the Crown; and that in Times neither too long ſince paſt, nor ſuch wherein Precedents on the ſide of the *Commons* could have obtain'd, if their Right had not been undoubted.

And, as this Authority has been exerciſed by the *Common-Hall*, before ever any *Common Council* of the preſent Form or Nature, had a ſetled Being; ſo it has been after; and ſince the Time that the *Vindicator* ſuppoſes the *Livery Common Hall* to have been inſtituted.

And the ſeeming Practice of later Days to the contrary, has been of ſuch kind, as has been far from proving any Authority to go along with Acts of *Common-Council*, for the *diſcharging* or *exempting* any one Perſon. The Diſcharge ariſing from the *Common-Hall*'s proceeding to a new Choice.

Farther yet, if either *By-Laws* or *Cuſtom*, or both, have crept in to the ſeeming Diminution of the Right of the *Electors*; as has appeared; they would have been void in Law, being contrary to their *Common-Law* Right declared by Charters, and confirmed by Acts of Parliament. And whatever Force, *Cuſtom* and *By-Laws*, ſuppoſing them clear, might have had againſt Rights ſo eſtabliſhed, the Act of Reſtitution, 2 *W.* & *M.* being made while the *Commons* were in Poſſeſſion of their Power, to oblige the Perſon whom they had choſen to hold, notwithſtanding any pretended *Diſcharge*; certainly wrought a Remitter to their antient Right. And this was remitted and reſtored to the *Livery-men*.

I may add, that by the expreſs Words of that Statute it is enacted, that the ſeveral *Companies*, that is, the *Myſteries* (ſo often named in the *City-Journals*) ſhall have all their *lawful Liberties*; and particularly every Perſon *admitted into the Freedoms* or *Liberties* of the *Companies*, ſhall enjoy *the Rights and Privileges* of a *Freeman*, and *Livery-man*.

Which confirms the *Livery-men* in the Poſſeſſion of the *Common-Hall*, with all the Rights and Incidents belonging to that Poſſeſſion.

And whereas the *Vindicator* ſuppoſes that the *Common-Council* can ſet aſide the *Rights and Privileges* of the *Livery-men*, as they of the *Common-Council* are the City's *Legiſlators*.

If they were ſuch, the Reſtitution, 2 *W.* & *M.* ſettles the Livery men beyond being ſhaken by any Authority within the City, for the making By-Laws. And in truth the Authority of making *By-Laws*, both at *Common-Law*, and by Charter, originally reſted with the whole Body of *Freemen*; and has formerly been regularly exerciſed by the whole Body, in their Aſſemblies in *Guildhall*, or other *Folkmote*.

The Exerciſe of this has by Cuſtom been confined to *Guildhall*; and is now become impracticable elſewhere.

Of this *Common-Hall*, and the Authority of this Court, the *Livery-men*, with the *Mayor* and *Aldermen*, were in full legal poſſeſſion, before ſuch a *Common Council* as now acts had any ſetled Being: nor has any Act of *Common-Council* ſo much as occaſioned the Privileges of the *Livery-men*, much leſs has it created them.

But, according to the Preſumption of Law, they have had an uninterrupted Poſſeſſion from before 8 *E.* 2. nor does it appear that any Man can have any Vote among them, otherwiſe than as a Livery-man; the Right of Suffrages in the *Common-Hall* being ſettled in the *Livery-men*; who have been, and yet are the true *Common-Council* of the City.

On the other ſide, that which now obtains the Name of the *Common-Council*, has been from its ſeveral Inſtitutions, and yet is, a mere Creature of the *Common-Hall*, and dependent upon its Pleaſure: at the moſt is but of the Nature of a *Committee*, and has no greater or higher Relation than of a Part to the whole: and whether it acts by itſelf, or in Conjunction with the greater Body; muſt be concluded by the Majority.

To cloſe this Argument, which may ſeem tedious to many; and, yet poſſibly, is no more labour'd than the ſtrength of Prepoſſeſſion requires; I may well ſay, with the *Vindicator*, *While ſome ſtrive to make Breaches, my buſineſs ſhall be to promote Peace.* *Vindic.* p. 8.

But it muſt be conſider'd, That Men have very different Notions of *Peace*.

When our *Governors*, in *Church* and *State*, valued themſelves upon the *Peacefulneſs* of former Reigns; many, who now would have the Commons of the *City* of *London* to ſacrifice their Right, to the quieting this Controverſie, were thought properly to have applied that old Sarcaſm; "*They make Solitude, and call it Peace.*

For my part, I always thought the aſſerting and adhering to the *Fundamental Conſtitution* of the *Great Community* in the firſt place; and next of the *City* of *London*, which, according to the *Confeſſor*'s Law, is the *Head* of the *Great Body*, to be the beſt means to ſecure ſuch a *Peace*, as *Engliſh Men* may rejoice to tranſmit to Poſterity. And I cannot but hope, That both Sides may receive this my ſincere Endeavour, as a ſeaſonable *Peace-Offering*. Caput legum & Regni.

FINIS.

Sold by *Richard Baldwin* near the *Oxford-Arms* in *Warwick-lane*. Price 6 *d.*